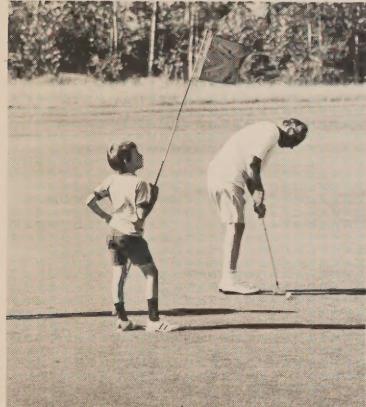


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Amortization of Non-Conforming Uses



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WHITE PAPER
ON THE PLANNING ACT
Background Paper 4

AMORTIZATION OF NON-CONFORMING USES

AN EXAMINATION OF U.S. EXPERIENCE IN THE COMPULSORY
TERMINATION OF TROUBLESOME USES

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Ontario

Prepared for the Ministry of Housing by
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Introduction

The subject of this report is a technique for terminating incompatible and troublesome, though legal, uses. These uses are existing at the time when an area is rezoned for a different use; the rezoning thereby makes the existing use non-conforming. Traditionally, in both Canadian and United States planning law, provisions for zoning bylaws have included regulations which prohibit the change, expansion and reconstruction of non-conforming uses. The notion was that such control over incompatible uses would see them wither away. In practice, however, this sort of regulation has not been very effective. Most non-conforming uses have not disappeared through obsolescence.

In Ontario, the active methods for terminating non-conforming uses are the acquisition of buildings and sites or persuasion and assistance in relocating uses. In the U.S., legal arrangements have been made available through amortization provisions in zoning bylaws for the compulsory termination of non-conforming uses, either summarily or after some appropriate period.

Amortization, like depreciation, rests on the principle of writing off investment over time. Amortization clauses have been included in U.S. zoning bylaws on the theory that property investment depreciates over time, the investment is recouped along with income from the use of the property, and it is therefore reasonable to insist on discontinuation of the use at the end of the amortization period without payment of compensation.

The purpose of the study is to examine the use of amortization powers in selected U.S. municipalities and draw conclusions about the usefulness of the technique for terminating non-conforming uses. The matters covered in the review of U.S. experience include the nature of the amortization provisions in the zoning ordinances; the legal basis for their operation; the public interest served; the private rights affected; the enforcement process; and the successes achieved as well as the problems encountered in the use of amortization powers. Sign controls and billboard

removal provisions in U.S. bylaws were not reviewed as these matters are already controlled in Ontario under the Municipal Act (Section 354).

The study was initiated as a result of requests from two sources: submissions made to the Planning Act Review Committee requesting that the Act be amended to give municipalities the authority to establish amortization periods under which the continuation of legal non-conforming uses, buildings or structures would terminate; and a specific proposal from the City of Toronto to the Province for such powers to be used generally and particularly for special classes of uses — 'physical culture establishments' — to enable the City to terminate such uses along Yonge Street.

The Planning Act Review Committee recommended that the requests be studied further, but cautioned that:

"Vested rights should not be taken away unless the municipality has adequately established the particular public interest which will be satisfied in doing so, an equitable basis for establishing amortization rules, and suitable procedures for ensuring that the persons affected are treated fairly."¹

The objective of this study was limited to an overview of amortization practices in order to give the Ministry of Housing an evaluation of whether a more detailed study is warranted for the preparation of appropriate enabling legislation.

A major note of caution is necessary concerning the legal issues surrounding amortization practices in the U.S. Legal analyses of U.S. non-conforming use regulations relate to the 50 legal systems of the different states plus Federal law and are mainly concerned with the question of whether this use of the police power is constitutional.

"From the legal viewpoint, it is obvious that termination of non-conforming uses will generally be regarded as the most drastic use of the police power in American land use controls."²

The particular constitutional concerns and the U.S. planning law on the subject are not of principal interest to Ontario planning legislation. Other legal questions more relevant to the Canadian context relate to statutory authorization for termination of non-conforming uses.

The report first discusses the background and U.S. enabling legislation for the amortization of non-conforming uses; it then summarizes the various types of amortization provisions available in the States; and this is followed by an examination of actual experience with the use of the amortization technique. The special application of the use of amortization powers in the control and regulation of certain places of adult amusement is dealt with in a separate section because the control of these establishments requires more comprehensive provisions than merely the powers to terminate their uses in certain locations. Finally, the report analyses the amortization experience and draws conclusions about the usefulness of this use control mechanism.

Summary of Conclusions

1. The theory of amortization of non-conforming uses is easy to understand and readily acceptable. In theory, amortization offers achievement of a public benefit (the removal of a non-conforming use) while protecting private property rights, and at no cost to the public purse. That is why this technique has been incorporated in many local zoning bylaws.
2. Another reason for its early acceptance in the U.S. was the prevalent preference for single use districts. The amortization procedure provided for the ultimate achievement of pure, single use districts. Consequently, some amortization bylaws establish wide powers for termination of non-conforming uses in all districts.
3. In practice the available amortization powers have not been widely used. They have been mainly used to terminate undesirable open uses, which had little investment attached to their uses. Non-conforming buildings have hardly been affected by amortization because the higher investment costs give them a "life" which under most bylaws has not expired yet.

4. Changing planning principles concerning acceptance of mixed use development makes it less important today to legislate for the removal of technically non-conforming but otherwise acceptable uses.
5. A number of cities have provided more limited amortization powers than are contained in earlier bylaws. They confine the areas in which amortization of non-conforming uses apply and they limit the nature of non-conformance which is to be eliminated.
6. In cities where amortization periods for the removal of some non-conforming buildings have expired, the experience shows that action is delayed, or uses are allowed to stay and continue, or the law is ignored. If there are serious intentions, therefore, for using amortization, basic reconsiderations for the use and applicability of these powers are required.
7. Generally, the establishment of removal powers over non-conforming uses should rest on an understanding of what is to be achieved. In principle, the particular amortization action should fit some definition of the public interest to be served.
8. Equally, the amortization method should protect private rights in two respects; one, the financial interest, is implied by the amortization principle, and the other is consideration of appropriate relocation areas with available land or floor space.
9. Since amortization by definition establishes periods of varying lengths after which uses must terminate, it is obvious that the amortization technique is of no practical value in many cases if an offending use is to be eliminated quickly. To achieve early termination may, therefore, require different actions.
10. Low or no investment in non-conforming uses are the criteria for justifying short termination periods. This has been practically established by the elimination of junk yards and other open uses in

relatively short periods. Another application of this principle has been less readily recognized and only recently applied. This is the case of non-conforming uses operated in buildings capable of accommodating conforming uses.

11. Existing controls over non-conforming uses in respect of prohibitions on expansions and rebuilding achieve in fact the same results as long term amortization powers — they contain the use.
12. Amortization of non-conforming uses requires administrative machinery. Surveys must be made initially and periodically; records must be kept; early voluntary termination must be secured to make it permanent; etc.
13. It has been recognized that there are other planning control and police powers which need to be used to improve urban living conditions. Amortization of non-conforming uses is one of these powers which is likely to be more effective when used alongside or in conjunction with other control methods.
14. The joint use of amortization with other zoning bylaw provisions and municipal ordinances is especially relevant in the control of certain types of adult entertainment uses. Zoning bylaws designed to deal with the regulation of sex businesses have been found to require more comprehensive provisions than merely the powers to terminate the use.
15. Amortization powers are appropriate at least as a partial approach to the termination of these uses because they are normally carried out on premises capable of being used for other, acceptable purposes and, therefore, the amortization period could be very short.
16. The control of offensive adult entertainment uses has been found to be especially difficult partly because of disagreements on where and how to permit these uses. However, amortization can play an important part in the enforcement of control policies; it can assist in controlling locations and in reducing the number of such establishments.

Clauses restricting changes, expansions and rebuilding of uses which became non-conforming through the introduction of zoning were included early in zoning bylaws in the U.S. and Canada. The theory was that these restrictions would, over time, lead to the cessation of the non-conforming uses and redevelopment of sites to conforming uses. This did not generally happen, however, and urban growth produced situations where non-conforming uses made life unpleasant and, sometimes, dangerous.

Around the turn of the century in the U.S., pre-zoning and early zoning ordinances dealt with the elimination of non-conforming and incompatible uses, for example, slaughterhouses and dairies in residential districts in New Orleans and brick kilns in residential areas in Los Angeles.³ During the early period of experimentation with termination procedures, very short periods were sometimes prescribed. When it was recognized that considerable financial harm was caused by immediate termination, zoning ordinances granted non-conforming uses an "automatic exception" period, such as 20 years for substantial structures. Eventually, the theory of amortization became established and found expression in a California decision:

"However, zoning legislation looks to the future in regulating district development and the eventual liquidation of nonconforming uses within a prescribed period commensurate with the investment involved."⁴

Since then, a range of more or less sophisticated amortization formulas relating to types of structures have been incorporated in U.S. zoning bylaws (see APPENDIX A for extracts from selected bylaws).

The rationale for amortizing non-conforming uses essentially is that non-conforming uses are considered troublesome and should cease in order to improve the living environment, but the termination of the undesirable uses should be achieved without affecting the rights of owners and without the need for payment of compensation. While the public interest is to be served in eliminating these uses, private persons require consideration and protection of their investment.

It appears that the early actions for discontinuance of existing uses were usually concerned with the limitation of nuisances. Later, urban growth and the acceptance of zoning based on the single use district principle broadened the non-conforming use issue. Many properties became non-conforming as single use zoning covered existing mixed use areas. Furthermore, detailed zoning requirements made certain properties non-conforming on grounds of standards, e.g. lot size and setback requirements. Yet amortization provisions came to apply equally to these matters of standards, although no apparent nuisance in the use was involved.

Similarly, the purity of zoning, especially of residential districts, made many incidental uses of a non-objective character non-conforming. During the heyday of amortization legislation, there was little concern about eliminating uses which, though non-conforming, were not necessarily offending any 'public interest' because the amortization period extended well into the future.

The rationale for using amortization rather than compulsory termination as a means of eliminating non-conforming uses is that in concept amortization regulations try to balance the public interest (and the public purse) with private rights. The amortization clause provides some flexibility in terminating non-conforming uses by permitting adjustment of the time periods suitable both to the degree of nuisance and the investment. However, blanket application of the mechanism has produced results which on reflection and later experience call for a more discriminating use of this particular technique.

In the United States the municipal powers for adopting and enforcing zoning bylaws generally are derived from state enabling legislation. To this extent there is a similarity with Ontario, where powers are exercised by municipalities as awarded by the Province in the Planning Act and other acts. However, the specific terms under which the powers are granted municipalities in the U.S. vary.

For the most part, the state enabling laws concerning zoning are very general and do not specify the nature of the ordinance which may be locally legislated. Because of the general nature of enabling acts, far reaching local bylaws are tested in the courts as to their constitutionality.

Florida's enabling zoning legislation is typical of many state statutes (see APPENDIX B). It gives the most general guidance about the exercise of municipal zoning and does not specifically provide for amortization, but a court has held that the Florida law provides a reasonable basis upon which to pass amortization regulations.

Two examples of states that specifically grant the right to amortize in the enabling zoning statutes are Oklahoma and Illinois (see APPENDIX B). These states are exceptions to the more general phrasing of enabling laws which leave it to the courts to decide whether certain zoning techniques like amortization are constitutional.

Before describing the general and some special amortization provisions in U.S. zoning bylaws, some indication should be given about the prevalence of amortization powers for non-conforming uses. Unfortunately, information for all zoning authorities is incomplete. However, a survey in 1971 conducted on behalf of the American Society of Planning Officials⁵ found that approximately two thirds of the 489 communities responding did not have ordinances requiring the amortization of non-conforming uses.

Another preliminary point about termination of non-conforming uses is the distinction between termination by operation of law and termination by discontinuance. The former refers to amortization procedures; termination by discontinuance means that if a non-conforming use stops operation, its use cannot be restarted. The period of discontinuance after which the non-conforming use right terminates varies from a few weeks up to three years; and in at least one case, Los Angeles County, the right to operate a non-conforming use may terminate immediately on discontinuance.

As can be expected, the kinds of amortization provisions adopted in bylaws vary considerably. First of all, amortization may be used to apply only to non-conforming uses in specific districts, not necessarily in all. For example, in San Francisco, which has the most thorough record system, termination of non-conforming uses is only provided for in residential districts. Other bylaws stipulate termination of non-conforming uses in commercial and industrial districts as well, usually requiring the removal of residential buildings from these districts. There were no examples discovered concerning non-conforming use termination in agricultural or other open scenic areas.

The type of use required to terminate also varies. In some cities, such as Baltimore, the termination clause on non-conforming uses applies only to open uses and not to any others.

Other communities, such as Skokie, Illinois and Corona, California have specifically exempted from the amortization provisions all uses and buildings which are non-conforming due to non-compliance with space and other development standards.

These specific applications of amortization powers — districts in which the powers apply and the specific uses which shall terminate — are important to emphasize; they lead to a better understanding of the range of application of the amortization technique. As will be discussed below, communities with the widest amortization powers seem to have found them too extensive and therefore have become disillusioned with their usefulness.

Another factor which varies in amortization bylaws is the time allowed for cessation. The time periods after which uses should terminate are based on structural criteria, value or age, or a combination of these factors. Open uses are given up to five years. In the case of buildings, the structural types with different lengths of termination may be tied to the building code or specified in the bylaw; value may be assessed value or market value; and when age of buildings is specified as a means of determining the length of non-conforming life, it is usually linked to the structural factor. Time periods typically used are 30 to 50 years for dwellings, 25 to 60 years for commercial buildings and 40 or more years for factories.

The periods cannot be compared between communities even where they appear to use the same method for arriving at amortization periods. Because the termination point occurs so far in the future, noone seems concerned about the fairness of the methods, although the early termination actions were tested in the courts on the basis of the time allowed.

Two extreme examples illustrate rigid and flexible approaches in the termination clauses of bylaws. The first is from Alberquerque, New Mexico:

SEC.40.D

a. Removal Schedule:

- (1) A building which is non-conforming as to use must be removed or converted to a conforming structure in the following periods for types of buildings as defined in the 1959 edition of the Building Code:
Types I and II, 60 years, (March 27, 2019);
Types III and IV, 50 years, (March 27, 2009);
and Type V, 40 years, (March 27, 1999).

The zoning bylaw does not provide for any variances beyond the removal dates, and one would like to be around on March 27, 1999 and subsequent dates to see the results.

The second example is from Fremont, California. The bylaw also has removal dates of 20, 30 and 40 years beyond the passing of the bylaw in 1971, but provision is also made for continued operation after the removal dates on the following basis:

SEC.12.23 ARTICLE 2

6. Removal

.... a Zoning Administrator may, upon individual application for which no fee will be required, allow such nonconforming building or structure and its use to continue to operate after said removal date, if he determines:

- (1) that such continued operation would provide an essential service or retail convenience to the immediate residential neighborhood or a benefit to the community, and
- (2) that its continuation for a prescribed period of additional time will be reasonably compatible with and not be detrimental to the public welfare or injurious to the improvements and use of adjacent properties.

This latter example represents a more adaptable approach, and one not so likely to lead to bylaw amendment as would the Albuquerque bylaw.

An even more flexible approach is the termination provision of the Santa Cruz zoning bylaw which does not even mention amortization periods.

SEC.13.04.470 NONCONFORMING USES

(a) 2. Nonconforming use - Termination by Board

A nonconforming use may be ordered to be terminated by order of the Board of Supervisors upon recommendation of the Planning Commission within a period to be specified in such order If the nonconforming user has not made a substantial investment in furtherance of such use, or the investment can be substantially utilized or recovered through a then permitted

use, such order may require complete termination of the nonconforming use within a minimum of one year after the date of the order. In making its recommendation, the Planning Commission shall consider the total cost of land and improvements, the length of time, the adaptability of the land and improvements to a then permitted use, the cost of moving and re-establishing the use elsewhere and other relevant factors.

This termination procedure may be taken as the extreme in flexibility and discretion, allowing each case to be considered on its merits.

A significant additional power is included in the Los Angeles County zoning bylaw concerning non-conforming uses or structures, which gives the County Commissioners the power to revoke any non-conforming use.

ARTICLE 10 (CHAPTER 5)
SECTION 510.2 REVOCATIONS OR MODIFICATIONS -
ADDITIONAL GROUNDS FOR NONCONFORMING USES AND
STRUCTURES

In addition to the grounds for revocation or modification contained in Section 510.1, a nonconforming use or structure may be revoked or modified after a public hearing if the Commission finds:

- (a) That the condition of the improvements, if any, on the property are such that to require the property to be used only for those uses permitted in the zone where it is located would not impair the constitutional rights of any person.
- (b) That the nature of the improvements are such that they can be altered so as to be used in conformity with the uses permitted in the zone in which such property is located without impairing the constitutional rights of any person.

Two points arise from this example which will be discussed later. First, these provisions offer the opportunity to deal with special cases, and deal with them outside any of the specified amortized periods. Second, they make the important distinction of a non-conforming use in a building which can be adapted to conforming uses.

The American Law Institute has prepared a Model Land Development Code as a recommendation for use by municipalities; it includes Article 4. Discontinuance of Existing Land Uses, with Reporters Commentary (see APPENDIX C). This model code constitutes a comprehensive approach and includes provisions for discontinuance of uses generally with grounds and enforcement procedures.

Uses Terminated

The actual number of uses terminated or buildings removed has been small mainly because buildings and sites with large investments are given long amortization periods which have not yet expired. Most of the experience with amortization has been with open uses. The ASPO survey conducted in the summer of 1971 reports only open use terminations, and our limited investigations confirm that little has been done beyond the elimination of open land uses. The type of uses that have been removed include: wreckers yards and junk yards, open storage, stables, mobile homes and minor workshops in garages or other insubstantial buildings.

There has been some success with terminating the use of larger non-conforming buildings used as workshops or factories, where the buildings were in need of repair. Working in conjunction with the enforcement of the building code, the requirements for upgrading the non-conforming building is often too expensive and hence the building is demolished and the non-conforming use terminates.

An unusual application of the amortization technique has recently been introduced in Baltimore. In residential districts with large older houses, the conversion of these houses into apartments was previously permitted. Over time, the occupancy of these dwelling units has increased to a point where some neighbourhoods feel that there should be a reduction in densities. The number of units is required to be reduced, called 'roll-back', and owners are given eight years in which to roll back the density.

The U.S. case law on amortization of non-conforming uses shows the following terminations which have been upheld:

Type of Use Terminated	District in which Located	Length of Period of Amortization	Number of Cases
1. Open Storage			
Junk yard	Residential	1 to 3 years	6
Junk yard	Whole Town	2 years	1
Cooperage	Residential	3 years	1
Plumbing Supply	Residential	5 years	1
2. Commercial			
Retail Store	Residential	1 year	2
Cheque	Transitional	18 months	1
Cashing Office	Residential		
Filling Station	Residential	10 and 25 years	2
3. Industrial and Miscellaneous			
Repair Shop	Residential	1 year	1
Cement Mixing	Light	8 months	1
Plant	Industrial		
Gravel Pit	Residential	3 years and "by agreement"	2
Dog Kennel	Residential	7 years	1
Keeping Pigeons	Residential	Immediate	1

Administration

One would expect that so complex a mechanism as the termination of legal uses requires detailed administrative procedures. Surprisingly, most municipalities do not seem to be concerned about administration at the time when amortization provisions are put in the zoning bylaw. Enforcement is some years away and they feel they can wait until then. This may be taken as a clear indication that a municipality does not really intend to make much of the provision; it is merely one of the powers that may be useful to have. This seems to be confirmed by the 1971 ASPO survey which reported that almost a third of the municipalities with amortization ordinances had taken no action. Considering that most of the actions, as reported, were taken against signs and billboards, a much higher proportion of municipalities having the powers do not appear to be using them for other non-conforming uses.

Generally, records are not kept of non-conforming uses. Cities tend to rely on the building permit process to stop enlargement and rebuilding of non-conforming uses. For really troublesome uses, they can rely on complaints. Baltimore obtained a list of non-conforming uses as part of a city-wide land use survey in 1960, but the list has not been kept up to date.

One example of a thorough survey and record keeping process, and perhaps the only one, is in San Francisco. After the amortization provision was adopted in 1960 covering residential districts, a complete survey was conducted which took four years and resulted in a record system with a card for each non-conforming use (see APPENDIX D). The survey documented some 1,700 cases; periodic inspections are made to see which uses have terminated voluntarily, and notices are sent every four years reminding owners of the time left until termination.

If the municipality wants to take enforcement action, eventually a survey has to be made when the first amortization period expires. Corona, California, for example, made its first survey last year when the 10 year period for the removal of non-conforming buildings expired. As will be discussed below, the nature of the problem discovered is leading to changes in the bylaw. If a survey has not been undertaken, cities have taken one of two courses: either to ignore the amortization provisions; or to extend the amortization period which is about to expire.

Other administrative procedures relate to applications for extensions of time or variances to make uses conforming as provided for in some bylaws. These procedures are the usual matters of notices, hearings, appeals and enforcement.

Where amortization has not been taken seriously, it has not been an administrative burden; where and when such action is intended, considerable staff time has to be available.

What has been achieved

Amortization bylaws show a great variety in intent and process, but whether the provisions are strong and precise or less rigid and adaptable to neighbourhood circumstances,

the accomplishments have been slight. Perhaps the problem with non-conforming uses is not as extensive as originally thought; this is true with the change in planning philosophy from single use development districts to the acceptance of mixed use urban development. This would be too easy an answer, however, for the relatively minor effect the amortization bylaws have had.

A reading of the bylaws gives no indication of likely achievement. Two examples, both of which were reported in the ASPO Report on the Effect of Nonconforming Land Use Amortization, show that neither a clear bylaw nor a reasonable and efficient approach in dealing with non-conforming uses will lead to much action. Santa Cruz, as was seen, has a strong and reasonable bylaw for terminating non-conforming uses, but it has only been used once. Current policy now is to make non-conforming uses conforming whenever an area is rezoned.

San Francisco, the other example, has an excellent record system and specific provisions for terminating open non-conforming uses by 1965. Some uses were terminated, some were given an extra five years, and quite a few are still in operation. As the time for the termination of uses in building approaches, changes to the non-conforming provisions are contemplated. This is a general trend. In San Francisco, of the original 1,700 'terminable' cases, probably only 300 may remain in that category when changes now being considered come into effect. The remainder will either be rezoned to become conforming or be allowed to continue with special conditions if they come under a group of uses which serve or are compatible within the neighbourhoods.

In Chicago, when the first 10 year period of grace came to an end for certain types of non-conforming buildings, the term was extended by one year; this extension has then annually been extended by one year. Today, Council has stopped the annual ritual of extension and ignores the termination provision altogether.

In Corona, California, when a 10 year period came up in 1977, a survey of affected properties was conducted and, as a result, Council decided not to take action; instead, staff were instructed to make recommendations for changes in the bylaw (with a strong hint to eliminate the amortization section).

THE SPECIAL CASE OF TERMINATING ADULT ENTERTAINMENT USES

A special aspect of the use of amortization powers to eliminate troublesome uses is in relation to the control of adult entertainment uses. This issue is of particular concern to the City of Toronto, where such uses are located, and has prompted the City to request the Province to amend the Planning Act to grant powers of amortization as a means of eliminating sex industry activities.

In a recent City Planning Board report,⁶ the Board notes that:

"Certain uses of recent origin along Yonge Street, most notably the 'physical culture establishments', have proven detrimental to the character of the street, have adversely affected other commercial establishments in the area, and have caused concern to residents in the vicinity as well as to the general public. These and similar troublesome uses may be able to be phased out within a short period if Ontario municipalities were granted the authority to establish amortization periods for non-conforming uses. Amortization powers would desirably include the designation of specific areas for amortization purposes and the establishment of priorities in respect of uses to be terminated within a specified period on the basis of the value of the investment in the use, the extent to which the use is obnoxious, the cost of its relocation and planning objectives for the area in which such uses are located."

The use of amortization to eliminate sex industry activities differs significantly from its application to other non-conforming uses. Amortization of adult amusement activities, as opposed to other non-conforming uses, is only applied to the use and usually not to the structure in which it is operated. Because the structure can be retained for a conforming use, the owner would suffer less hardship than an owner of a non-conforming structure which must be removed. This means that the amortization period for sex industry uses could be relatively short — an important factor in controlling such uses.

The amortization of adult entertainment activities is also unique in that it is part of the wider issue of controlling and regulating an entire class of uses. With other non-conforming uses, termination is usually directed to a particular use in a particular location (e.g. a junk yard in a residential neighbourhood). With sex industry uses, termination is only one aspect of the control. Amortization can be useful in eliminating existing uses but, on a long term basis, it is the effectiveness of the constraints within the bylaw, in terms of restricted uses and locations, that can constrain sex industry activities. The actual control of sex industry uses is a function of the bylaw, not amortization per se.

A review of relevant U.S. experience⁷ indicates that many communities have been attempting to deal with the problems of adult entertainment facilities through regulations. As in the City of Toronto, the proliferation of these uses has caused problems not only in terms of harassment but also in the detrimental effect of these uses on the surrounding area. Concentrations of such uses have resulted in higher crime rates, traffic congestion, deteriorating property values and depressed neighbourhood conditions.⁸

However, in attempting to control sex industry uses through the planning system, most communities have had to rely on more than one instrument. Zoning is generally used in combination with some form of a permit system, frequently licensing. The zoning bylaw deals with the use and the development standards related to the use; the permit with the operator and/or the operation of the activity. Occasionally an ordinance has been passed which attempts to include both permit and zoning matters in one regulation (see APPENDIX E), but this method is thought to be less effective than using separate instruments governed by a specific policy or plan. Not all communities have amortization provisions attached to their bylaws; some rely on revocation of the permit where the use and/or locational standards are not in conformity with the regulation.

Since it is legally questionable whether vested rights can be totally removed and an entire class of uses made illegal throughout a municipality by means of a zoning bylaw, most adult entertainment bylaws attempt to control the activities through restrictions on permitted uses and locations. Two general approaches have been used in formulating development standards for such uses. Regulatory objectives have been pursued either through dispersing sex industry uses as in

Detroit, or by concentrating them as in Boston. Almost all cities that use zoning to control adult entertainment establishments have developed variations on the Boston and Detroit schemes. These approaches are described below.

Boston

The Boston approach to controlling sex industry uses has been to create an "adult entertainment zone" which concentrates similar uses into a single small area and prevents the spread of such uses into other parts of the city, especially to residential areas.

Like the 'Yonge Street strip', the Boston area was already characterized by a concentration of pornographic uses such as adult bookstores, theatres and strip joints. As the uses were increasing, conventional businesses complained of increasing crime and the spread of such uses into other areas. Assuming that efforts to disperse the industries would be futile, Boston authorities created a special zone which would be the only place where such uses would be permitted and, to fight against a 'skid row' effect, embarked on a renewal program to upgrade the district and restore deteriorating buildings. The intention of the program was to create an entertainment district comparable to those districts in London, Copenhagen and San Francisco. Adults-only uses are permitted in the area as of right.

Proponents of the Boston system are satisfied that the approach achieves its objectives.⁹ Evaluations of the system, however, point out critical problems with the concentration approach. Although it is claimed that crime has been reduced within the zone, just outside the area the crime rate and the vacancy rate in adjacent office buildings has increased; the uses within the area have had a detrimental effect on the area surrounding the zone.¹⁰

Detroit

The Detroit approach to regulating adult uses stemmed from an attempt to prevent the proliferation of 'skid row' uses. The City had studied skid row districts and found that skid row development was accelerated by the concentration of certain types of uses such as pawn shops, bars, etc. A regulation was passed which had two main objectives:¹¹ first, to keep typical skid row uses separate from one another, and second, to keep these same uses separate from residential areas. Although adult entertainment uses were

not originally included in the regulation, as these uses began to proliferate, they later became attached to the bylaw. The dispersal policy contained within the bylaw spread the uses throughout commercial and industrial areas of the city.

The regulation contained a list of permitted uses; these uses were then subject to a conditional permit process. Two key locational standards were developed to evaluate the uses in the permit process. The first standard supported the residential objective of the ordinance, stating that none of the adult-type uses would be permitted within 500 feet of a residentially zoned area. The second key standard established that no listed uses would be permitted within 1,000 feet of any two other regulated uses. Provisions also included amortizing non-conforming uses on a one year basis.

The Detroit approach attempts to control adult entertainment uses by restricting the number of districts in which these uses could locate, and within the allowable districts, limiting the concentration of these uses. While the approach may not control the aggregate growth of the sex industry, the stringent limitations in the regulations on the establishment of new services are in themselves a deterrent. The viability of the sex industry is fed partly by the clustering of the establishments, and by dispersing the uses, proliferation is thereby discouraged. The dispersal policy and variations on it have been used most widely in other cities including New Orleans and New York.

In New York, an amendment to the zoning bylaw (see APPENDIX F) was proposed in 1977 to control adult entertainment uses city-wide. The amendment was not passed because of objections, but it may be put forward again. The amendment sets forth controls on the number, location and concentration of adult uses within any district; procedures for terminating or amortizing those adult uses which do not comply with the location requirements; limits on permitted concentration; minimum distance from residential, C1 and C2 districts, schools and Houses of Worship; sign regulations and special permits for the Board of Standards and Appeals and the City Planning Commission. The amendment separates five 'adult uses' from the general use categories and defines such uses as adult bookstores, adult motion picture theatres, adult 'topless' entertainment establishments, adult coin operated entertainment facilities and adult physical culture establishments.

The objections to the proposed amendment indicate some of the problems resulting from the attempt to control sex industry uses through zoning. The amendment has been attacked on the basis of civil liberty and on moral grounds. The civil libertarians claim that the amendment is an infringement on the freedom of speech and the 'evangelicals' claim that a zoning recognition of sex as a permitted use is morally unacceptable, sex use should not be permitted anywhere.¹² These and similar criticisms have been expressed elsewhere, reflecting some of the difficulties of controlling such uses under the planning system rather than just under the Criminal Code.

Although their policies for control are significantly different, both the Boston and the Detroit approaches have been created for the same reason: to prevent deterioration of areas due to heavy concentrations of adult uses, to guard against their location in or adjacent to residential areas and to exercise some control over the character of any single adult use. The majority of zoning controls have followed the Detroit example.

The most commonly regulated uses in all bylaws were adult bookstores and adult theatres, but some communities have also regulated mini-theatres, adult cabarets and adult drive-ins. As noted in the New York example, their bylaw also applied to adult 'physical culture establishments', i.e. massage parlours.

Despite the number of mechanisms available for controlling adult entertainment uses, enforcement has had varying degrees of success. Zoning bylaws provide a legally effective means of controlling the location of such uses, but problems have frequently arisen through the definitions attempting to restrict the permitted uses. Definitions have proved unsatisfactory either because they are too vague and imprecise or too narrow and limited. The former permits too much discretion and the latter invites endless loopholes; both types require constant amendment to enforce any ongoing control. Needless to say, unless a use can be proven to be non-conforming, amortization powers will do little to eliminate the use.

The New York example illustrates how amortization provisions may be used to terminate those existing adult uses not in compliance with the locational policies of the bylaw.

"Where these concentration limits are already exceeded by existing adult uses, the number of such uses is to be reduced by amortization to the permissible limits. This amortization is achieved by subdividing the districts in which adult uses are permitted into zones having a 1,000 foot east-west dimension. Within each zone the two adult uses (in C4 districts) or the three adult uses (in C6 districts) which are furthest from the nearest residential district boundary are permitted to remain and all other adult uses whether pre-existing or new will be permitted only as new uses which must comply with the concentration regulations. While these amortization regulations will require the termination of some existing adult uses there are locations available where new adult uses may be established. The premises affected by the amortization requirements, within one year of the effective date of the amendments, are readily adaptable for other conforming uses, and the Commission is of the opinion that no apparent hardships in so converting the premises will result. Amortization of objectionable non-conforming uses is a recognized police power technique which has been sustained in New York as well as many other state jurisdictions."¹³

The provision of amortization powers in connection with zoning bylaws to control offensive adult entertainment uses can obviously be useful in eliminating such uses. Similar results might also be achieved by tying the licence or permit and the bylaw to an approved policy establishing the types of uses permitted and the locational criteria affecting such uses. Non-compliance with the bylaw would result in automatic revocation of the licence. In either case, despite the availability of the controls, elimination is probably as frequently achieved under the Criminal Code as under the zoning and licencing enforcement.¹⁴ These factors are important to consider in light of the City of Toronto's request for amortization powers to eliminate physical culture establishments. Although outside the scope of this study, assuming the City can eliminate nuisance establishments, the major problem for the City will be the re-use of the space vacated by sex shop tenants to prevent their return in circumvention of the bylaws.

The purpose of this review is to arrive at relevant conclusions about the usefulness of amortization powers for Ontario communities. It is not intended to provide an extensive assessment of U.S. amortization activities and practices. This concluding section focuses on the practical lessons of the U.S. experience and makes judgments to assist in the determination of the nature of desirable enabling legislation, if any, in response to the requests made by municipalities to be granted powers of terminating non-conforming uses through amortization.

Public Interest and Private Rights

Though obvious, it must nevertheless be stressed that the central issue in terminating legal uses is the classic planning problem of balancing the public interest with private rights. All the cases reviewed show that legal, political and social considerations as well as technical and practical enforcement measures hinge on questions of satisfying the public interest and protecting private rights. Failure to identify these issues before adopting amortization provisions in a zoning bylaw leads to disappointment, administrative confusion, political recrimination and discrimination and predictable amendments to bylaws or disrespect for laws.

It is evident that many communities in the U.S. did not establish beforehand what they were trying to achieve by the elimination of non-conforming uses. In the extreme cases of blanket, all-inclusive non-conforming use eliminations it would be difficult, if not impossible, to find public interest justifications for such sweeping powers as the removal of residential buildings which according to new zoning bylaws have insufficient side yards.

In less extreme provisions, such as elimination of commercial and industrial uses in residential areas, one still has to examine whether all such uses in all residential areas in all circumstances need to be relocated, and ask what particular public interest is satisfied in doing so.

As was mentioned, the corner store in residential areas which a few years ago was not considered a compatible use has become, at least in some areas, not only a permissible use but a desirable one. Furthermore, a corner store cannot really be relocated; it functions in the neighbourhood or goes out of business. In this instance, neither is the public interest satisfied, nor are private rights respected.

This is not the place for a discussion of "the public interest" nor for suggesting guidelines for measuring the need for terminating non-conforming uses. That some municipalities have wrestled with these problems is shown by the existence of bylaws with limited application of amortization powers, i.e. in some specified areas only, and with provisions for maintenance of non-conforming uses and buildings which "benefit the community" and which are "not detrimental to the public welfare or injurious to the use of adjacent properties".

As a principle it can, therefore, be accepted that the nature of amortization action should fit some definition of the public interest to be served, or more specifically, the bylaw should state the grounds for terminating non-conforming uses, preferably tied to adopted planning policies.

Another and more fundamental question concerns private rights and amortization of buildings rather than of open land; it has to do with the perhaps false analogy between amortization for tax accounting purposes and investment for continued use. The principle of depreciation is based on the return on investment and the notion of 'running down' the investment over a period of time. It is implied, therefore, that a complete reinvestment will be required at the end of the amortization period. This is not what actually happens. In the case, say, of a factory built on a given non-conforming or conforming site, what in fact happens is that the building will be maintained at some cost, and machinery and equipment will be upgraded to make the whole property serviceable for continued use beyond the depreciation period. Therefore, an amortization termination bylaw on such a property means, in effect, a forced 'running down' of the property and high investment at the end of the amortization period. The replacement investment, apart from the moving costs, would normally be appreciably higher than the sum total of the continuing maintenance costs.

This point has not been discovered in the literature, though it may well have been brought up in court cases. It may also

have been a consideration when councils amended bylaws extending amortization periods. Alternatively, it may explain the inconsistencies in the relationships between time periods and investments.

Another legal issue should also be mentioned. Some undesirable uses, such as junk yards and especially sex businesses, are regarded by some sections of the community as unacceptable uses anywhere. The question is, can a municipality prevent the establishment of a particular use entirely? Apparently, a court decision in Kentucky¹⁵ upheld a bylaw allowing "junk yards and similar open land" to be amortized as non-conforming uses in the whole town. Legal opinion is required to comment on whether this would be acceptable in Ontario.

Normally, relocation areas suitable for the non-conforming uses are zoned for them; for example, industrially and commercially zoned areas could receive workshops and stores which may be zoned out of residential areas. Whether land in these zones is actually available may be a question which should be addressed when considering the institution of termination powers. The special case of the control of the adult entertainment industry highlights the need for finding planning and zoning solutions which can complement termination of use powers; if uses are inappropriate in certain areas, where are the acceptable locations for them?

These questions indicate that a comprehensive amortization bylaw, including all items of non-conformance in all areas of a municipality, is unlikely to assure equal and adequate protection of private rights. Generally, bylaws which deal selectively with amortization appear to have a better chance of successful implementation and also can more readily satisfy the public interest and protect private rights.

The degree to which amortization powers differentiate between uses and locations, and the selectivity in applying the powers, should be matters best left to local preferences and local circumstances. The most selective way of dealing with the elimination of troublesome uses is a case by case approach, which is perhaps exemplified by the revocation method provided for in one of the non-conforming use termination provisions mentioned.

Theory and Practice

The theory of disposing of troublesome, though legally established, uses by employing the accounting practice of depreciation is very attractive. By finding a way to prove that no value attaches to a use or a building, it follows that the termination of the use can be demanded without payment. Early non-conforming bylaw sections in Minnesota made provision for payment to end non-conforming uses; but predictably, the provision was not used because either the public did not want to pay or the potential improvement was not worth paying for, or again there was an inherent reluctance to act when faced with concrete proposals for ending a use. Seriously offending open uses were dealt with in several cities because minimal investments were involved and tangible results could be experienced in a short time, though actions were contested.

By now there is no longer any legal problem in the U.S. about the amortization of non-conforming uses. It is accepted as constitutional, and it is accepted that it can protect property rights. But as so often happens, once the case has been made, the interest diminishes and generally it can be said that amortization is no longer taken very seriously, except for open uses, signs and billboard removal and, more recently, as part of a broad campaign to control sex businesses.

Long term removal of non-conforming buildings after 10, 20 or more years is not likely to work or become a solution for two reasons. First, if the offending use is a real nuisance, it is hardly "in the public interest" to wait 20 years or more to improve the situation. Secondly, as several examples have shown, when the time for enforcement arrives it becomes politically difficult to carry out the intentions established by councillors many years ago. Apart from changes that may have occurred in the meantime, politicians dislike the thought of heavy-handed action in removing uses and buildings.

The amortization approach requires as well detailed and consistent administration. There is need for a survey to establish legal non-conforming uses to prevent illegal non-conforming uses from establishing themselves and to assure that rights are extinguished on voluntary discontinuance of a use. Periodic inspections and surveys are also needed to keep records up to date. All of this administrative machinery involves commitment of staff which few cities have been interested enough to provide.

It is an advantage for Ontario to consider amortization after others have experimented with the technique because it allows us to benefit from the experience in the States. The important lessons to consider in deciding if and how to introduce the amortization technique are as follows.

As a general rule, the amortization principle works in terminating non-conforming uses where the investment in the use has been small. Where the investment is substantial the amortization principle calls for termination of the use many years in the future and the primary purpose of ameliorating an unacceptable condition cannot be achieved. To achieve an early improvement in incompatible situations requires different actions.

The long term termination provisions of amortization do not achieve any short or medium term advantages which cannot be equally well secured by presently existing bylaw provisions in Ontario. The control over non-conforming uses without amortization can provide for prohibition of expansion, rebuilding and reestablishment of the use after it has been discontinued for a specified time.

It is argued that the long term termination powers provided by amortization may be useful in the future for redevelopment of areas with non-conforming uses and buildings. This is true but its usefulness has not been tested yet. However, it can be effective only if proper records are kept on non-conforming uses from the time the amortization bylaw is passed.

The adoption of a broadly applicable amortization bylaw is often regarded as a desirable tool for future use and is put aside as of no immediate consequence. This leads to a false sense of accomplishment and ultimately disillusion.

Low investment criteria alone should not be the reason for using amortization to terminate non-conforming uses. Among non-conforming uses many have been found unexceptionable and some actually desirable. This leads to the conclusion that termination of non-conforming uses should be carried out selectively and should generally be based on explicit planning policies concerning non-conforming development.

An important issue related to 'low investment' non-conforming uses is the non-conforming use carried on in a building or part of a building which is capable of being used by conforming uses. Here, as in open land uses, the termination period can be very short, according to the amortization principle. Depending on the nature and conflict of such non-conforming uses, the amortization technique can be effectively used in these situations.

A community concerned about the undesirable effects of older, and largely uncontrolled, development or about new uses which require control, must usually employ a number of powers to achieve results. Amortization of non-conforming uses is one of the powers which is likely to be more effective when used in conjunction with other police powers. One example is the enforcement of building codes in the case of non-conforming buildings: if they have many years of amortized life, this can lead to earlier termination because the cost of bringing the building up to standard is too high for the remaining amortized period. Another example is the joint use of several zoning bylaw provisions, including amortization, with licensing regulations to restrict and control troublesome uses. A third approach is a combination of amortization and imposition of performance standards. This has been successful in achieving acceptable improvements in such cases as the screening and operating of open land uses.

Greater awareness about environmental effects of urban development has also led to new legislation and reexamination of the application of existing legislation. In the U.S., municipalities are using means other than amortization of non-conforming uses to improve the urban environment, and sometimes achieve results in a shorter period than would be possible under amortization. The Clean Air and Clean Water Acts are used against offending industries in non-conforming as well as conforming situations. Health codes and ordinances also help to improve conditions, if enforced.

Finally, a community-wide program for environmental improvement would include provision for relocation of non-conforming uses by negotiation with public assistance in site selection and, depending on the seriousness of the circumstances, with public financial assistance.

NOTES

- 1 Report of the Planning Act Review Committee, Part 3,
 No. 64, p.172. April 1977.
- 2 Norman Williams Jr., American Planning Law, Vol. 4,
 p. 518. 1975 edition.
- 3 For a review of the legal history in the United States
 of the compulsory termination of non-conforming uses,
 see Norman Williams Jr., American Planning Law,
 Chapter 116 "Amortization and Compulsory Termination".
- 4 43 Cal 2d at 127, 272 P2d at 8-9
- 5 ASPO Planning Advisory Service Report No. 280, The
 Effect of Nonconforming Land Use Amortization,
 Robert L. Scott. May 1972.
- 6 City of Toronto Planning Board, Report in the form of
 a Request to the Province of Ontario to Obtain Powers
 of Amortization. July 14, 1977.
- 7 ASPO Planning Advisory Service Report, No. 327,
 Regulating Sex Businesses, William Toner. May 1977.
- 8 Regulating Sex Businesses, p.2.
- 9 Regulating Sex Businesses, p.8.
- 10 City of Toronto, Special Committee, Places of Amusement
 Report and Recommendations, p. 107. June 1977.
- 11 Regulating Sex Businesses, p.3.

- 12 The legal and zoning considerations of the New York by-law amendment controversy are discussed in a forthcoming article entitled "Zoning Obscenity or the Moral Politics of Porn", Buffalo Law Review. Spring 1978.
- 13 New York City Planning Commission, Report on Proposed Amendments of the Zoning Resolution pursuant to Section 200 of the New York City Charter relating to various sections concerning the definition of and regulation of adult uses, p.7. January 26, 1977.
- 14 Places of Amusement, p. 110.
- 15 Gates v Jarvis, Cornette and Payton, 465 SW2d 278 (Ky 1971).

Appendix

APPENDIX A —
NON-CONFORMING USE CLAUSES FROM SELECTED BYLAWS

- San Francisco, California
- Chicago, Illinois
- Corona, California
(selected passages only)
- Los Angeles County, California
(selected passages only)
- Santa Cruz County, California
(selected passages only)
- Baltimore, Maryland
(selected passages only)


San Francisco, California

Article 1

CITY PLANNING CODE

Chapter II

SEC. 150. Non-conforming Buildings and Uses, General.

(a) Any use lawfully occupying a building or land at the effective date of this Code, or of amendments thereto, that does not conform to the use regulations for the district in which it is located shall be deemed to be a non-conforming use and may be continued, except as otherwise provided in Sections 151 through 156.

(b) Any building lawfully existing at the effective date of this Code, or of amendments thereto, that lawfully is wholly or partially used or designed for use contrary to the use regulations for the district in which it is located shall be deemed to be a non-conforming building and may be so used or continue in such use, except as otherwise provided in Sections 151 through 156. Maintenance and minor repairs necessary to keep a non-conforming building in sound condition during such continuance shall be permitted.

(c) Any building or use for which a permit was lawfully granted prior to May 2, 1960, pursuant to the City Planning Code provisions in effect on that date, and which was thereafter commenced and completed in accordance with such provisions, shall be deemed to have been a lawfully existing building or use on that date. Any building or use for which a permit has been lawfully granted pursuant to the provisions of this Code relating to amendments, and which has thereafter been commenced and completed in accordance with such provisions, shall be deemed to be a lawfully existing building or use at the time of the amendment that causes it to become non-conforming.

(Amended Ord. 234-72, approved 8-18-72)

SEC. 150.1. Non-conforming Garment Shops and Factories.

(a) A garment shop or a garment factory (as defined in the Building Code), existing on January 1, 1960, and located either in a commercial district or in a building having legal non-conforming commercial status under provisions of the Planning Code in force on that date, shall be regarded as a legal non-conforming use under provisions of the Planning Code becoming effective on May 2, 1960, if such shop or factory was brought into compliance with all applicable codes and ordinances prior to January 1, 1961. Permits of occupancy must have been obtained prior to January 1, 1961, by such shop or factory and any shop or factory which failed to comply with all applicable codes and ordinances prior to that date shall have closed and discontinued all operations.

(b) Garment shops and garment factories located in a residential district, except those located in legal non-conforming commercial buildings, shall have closed and ceased all operations by January 1, 1961.

(c) If the operation of any garment shop located outside the area described in Section 236 of this Code or the operation of any garment factory located in any commercial district is abandoned or discontinued, it shall not therefore be reopened in the same location.

(Amended Ord. 136-68, approved 3-29-68)

SEC. 151. Non-conforming Buildings, Alterations and Enlargements. No building, the use of which is non-conforming wholly or in any substantial part, shall be structurally altered, unless the alteration is required by law, or will have the effect of and actually result in eliminating the non-conforming use, or unless the aggregate total cost of all such alterations, as estimated by the Department of Public Works, is less than one-half ($\frac{1}{2}$) of the assessed valuation of the improvements prior to the first such alteration. This limitation shall not apply to the alteration or reconstruction of buildings used solely for an automobile service station, or other use, where the lot coverage does not exceed thirty (30) per cent.

(a) A non-conforming building may be enlarged or extended only if the entire building is thereafter devoted to conforming use.

(b) No building partially occupied by a non-conforming use shall be altered in such a way as to permit the enlargement or expansion of the space occupied by such non-conforming use.

(c) No non-conforming building in an R-1-D, R-1 or R-2 district shall be so altered as to increase the number of dwelling units therein.

(d) No non-conforming use may be enlarged or extended in such a way as to occupy any required open space, or any land beyond the boundaries of the lot as it existed at the effective date of this Code, or to displace any conforming use in the same building or on the same parcel.

(e) Within the limitations of this section, a non-conforming use may be changed to a use of the same or of a more restricted character, but may not thereafter be changed to any less restricted use.

(f) Notwithstanding the foregoing, the City Planning Commission may authorize the following with respect to a non-conforming dwelling in an M district, according to the procedures for conditional use approval in Section 303 of this Code:

1. An increase in the number of dwelling units occupying space already in use for dwelling purposes; and
2. Alteration and enlargement of a dwelling which is then occupied by the owner as his place of residence.

(Amended Ord. 141-73, approved 4-12-73)

SEC. 152. Non-conforming Use, Abandonment. Whenever a non-conforming use has been changed to a conforming use, or discontinued for a continuous period of eighteen (18) months, or for a continuous period of three (3) years if the building was originally designed or arranged for a non-conforming commercial or industrial use; or whenever there is otherwise evident a clear intent on the part of the owner to abandon a non-conforming use, such use shall not after being so changed, discontinued or abandoned be re-established, and the use of the premises thereafter shall be in conformity with the regulations for the district. Where no enclosed building is involved, discontinuance of a non-conforming use for a period of six (6) months shall constitute abandonment.

SEC. 153. Limited Continuance of Certain Non-conforming Uses or Buildings. The period of time during which the following non-conforming uses or buildings may continue or remain shall be limited to five (5) years from the effective date of this Code (May 2, 1960), or of the amendment thereto which caused it to be non-conforming. Every such non-conforming use or building shall be completely eliminated within ninety (90) days thereafter.

(a) Any non-conforming commercial or industrial use of land where no enclosed building is involved.

(b) Any non-conforming commercial or industrial building in any R district having an assessed valuation not in excess of Five Hundred (\$500) Dollars on the effective date of this Code or such later date as the building becomes non-conforming, with the following exceptions:

1. Any lawful use in this category in a building having an assessed valuation of Two Hundred Fifty (\$250) Dollars or more on the effective date of this Code, or such later date as the building becomes non-conforming, shall have a period of permitted continuance of ten (10) years from the date at which the property was placed in a Residential zoning classification, if such a period of continuance produces an expiration date which is later than the expiration date stated above; or
2. Any lawful use in this category which is of a type first permitted in a C-1 district; or of a type first permitted in any other district and supplying commodities at retail, or offering personal services, primarily to residents of the immediate vicinity; shall have a period of permitted continuance of ten (10) years from the effective date of this Code, or of the amendment thereto which caused the use to be non-conforming. After five (5) years of such period have elapsed, any use as described in this paragraph (2) shall, upon application, be qualified for consideration by the Commission as a Conditional Use as regulated in Section 303.

(Amended Ord. 235-68, approved 8-7-68)

SEC. 154. Continuance of Other Non-conforming Buildings. The purpose of this section is to provide for the gradual elimination or conversion, after reasonable allowance of time for the amortization of investments therein, of certain classes of non-conforming buildings, in order to encourage and promote the orderly and beneficial development of the land with conforming buildings and uses. The section is intended to apply to obsolescent buildings whose use is widely at variance with the regulations of this Code, and is safeguarded against unnecessary hardship in application by provision for a minimum period of continuance of twenty (20) years, by procedures for extensions and exceptions, and by the requirement of repeated notice as the buildings approach an age indicative of obsolescence. It is further declared that the requirement of eventual removal, or conversion to conforming use of such buildings, subject to the exceptions set forth is in the public interest and is intended to promote the general welfare.

(a) This section shall apply only to buildings in R districts, which are designed, arranged or used for a purpose first permitted as a principal use in a C or M district. It shall not apply to any non-conforming building or use of land whose continuance is more strictly limited by the provisions of Section 153.

(b) Every such building may be continued in such use for at least twenty (20) years from the effective date of this Code (May 2, 1960), or of the amendment thereto which causes it to be non-conforming, and may be continued for a longer period, if it has not reached the age hereinafter specified, computed from the date the building was erected, or from January 1, 1930, whichever is later. For buildings of Type 1 or Type 2, as defined in the Building Code of the City, the specified age shall be fifty (50) years; for Type 3 buildings it shall be forty (40) years, and for Type 4 and Type 5 buildings it shall be thirty (30) years.

(c) Upon the expiration of the period specified for each such building, it shall be completely removed or altered and converted to a conforming building and use, except as hereinafter provided.

(d) Where special circumstances apply to any such building, which do not apply generally to others affected hereby, extensions of time may be granted under the variance procedure as regulated in Section 305, but no such extension shall be for a period in excess of one (1) year. Successive extensions, subject to the same limitations, may be granted upon new application.

(e) The following types of non-conforming buildings affected by this section, shall be qualified for consideration by the Commission as Conditional Uses as regulated in Section 303, upon application filed at any time during the period of permitted continuance specified above:

1. A multiple dwelling on a corner lot where the non-conforming use consists of a use first permitted in a C-1 district occupying all or part of the ground floor;

2. A commercial or industrial building which occupies a lot having an area in excess of ten thousand (10,000) square feet;
3. A building used for an automobile service station where the lot coverage is less than thirty (30) per cent, or other building and use having the same characteristics as to coverage and relatively rapid obsolescence of building;
4. In any R-1, R-2, R-3, R-3.5, R-4 or R-5 district, a professional office or offices, a motel, a mortuary, an animal hospital or clinic or a retail store as permitted in C-1 districts.

(f) The Zoning Administrator shall give notice by mail of the date of expiration of the periods of permitted continuance specified herein to each owner of record within four (4) years of the effective date of this Code, or of the date of the amendment which caused the use to become non-conforming, and shall repeat such notice at approximate intervals of four (4) years thereafter. A final notice shall be given one (1) year before said date of expiration in each instance. The notices shall set forth all pertinent provisions of this section, including the declared purposes thereof. Failure to send notice by mail to any such owner where the address of such owner is not a matter of public record, or where no permit of occupancy for a non-conforming use covered by this section has been issued as provided in Section 106, shall not invalidate any proceedings under this section.

(Amended Ord. 141-73, approved 4-12-73)

SEC. 155. Restoration of Damaged Non-conforming Buildings. Nothing in this Code shall be construed to prevent the restoration and the resumption of former lawful use of any lawful building that is damaged or destroyed by fire, or other calamity, or by Act of God or by the public enemy; provided that such restoration is permitted by the Building Code, and is started within one (1) year and diligently prosecuted to completion. The age of such a building for the purposes of Sections 153 and 154 shall nevertheless be computed from the date of the original construction of the building. No non-conforming building that is voluntarily razed or required by any law to be razed by the owner thereof may thereafter be restored except in full conformity with all the provisions of this Code as to building and use.

SEC. 156. Non-conforming Buildings, Exceptions. Wherever a lawfully existing building or a use otherwise conforms to the use regulations of this Code, but is non-conforming only in the particular manner hereinafter specified, the building and use shall be exempt from the provisions of Section 151(a) and Section 154.

1. In any R district, where a dwelling is non-conforming only as to the number of dwelling units it contains; provided, that no such building shall be structurally altered so as to increase the number of dwelling units therein.
2. In any R-4 or R-5 district, where a use first permitted in a C-1 district occupies ground floor space within a multiple dwelling which is located upon a corner lot.
3. In a C-M district, where the use is less distant from an R district than specified in the regulations for the district in which it is located.
4. A motel if located in an R-3, R-3.5, R-4 or R-5 district.

(Amended Ord. 187-64, approved 7-10-64)

Chicago, Illinois

Non-Conforming Buildings and Structures and Use Thereof

6.4 Any lawfully existing building or structure which does not conform to the regulations of the district in which it is located may be continued subject to the provisions of this Section 6.4.

6.4-1 Repairs and Alterations. Ordinary repairs and alterations may be made to a non-conforming building or structure, provided that no structural alterations shall be made in or to a building or structure, all or substantially all of which is designed or intended for a use not permitted in the district in which it is located, except those required by law or except to make the building or structure and use thereof conform to the regulations of the district in which it is located. For the purpose of this section, repairs shall include the replacement of storage-tanks where the safety of operation of the installation requires such replacement, and other replacements of/or substitutions for machinery or equipment not involving structural alterations to the building or structure except as hereinabove provided.

6.4-2 Additions and Enlargements. A non-conforming building or structure which is non-conforming as to bulk, or all or substantially all of which is designed or intended for a use not permitted in the district in which it is located shall not be added to or enlarged in any

manner unless such additions and enlargements thereto are made to conform to all the regulations of the district in which it is located, and unless such non-conforming building or structure, including all additions and enlargements thereto, shall conform to:

1. Applicable regulations concerning the amount of lot area provided per dwelling unit and allowable floor area ratio as provided in Article 7 of this Comprehensive Amendment;
2. The allowable floor area ratio and gross floor area in relation to floor area per establishment as provided in Articles 8 and 9 of this Comprehensive Amendment, and;
3. The allowable floor area ratio as provided in Article 10 of this Comprehensive Amendment.

(Amend. 4-9-58. Coun. J. page 7546.)

6.4-3 Moving. No building or structure which does not conform to all of the regulations of the district in which it is located shall be moved in whole or part to any other location on the lot unless every portion of such building or structure which is moved and the use thereof is made to conform to all the regulations of the district in which it is located.

6.4-4 Restoration of Damaged Non-Conforming Building. A building or structure, all or substantially all of which is designed or intended for a use which is not permitted in the district in which it is located, and which is destroyed or damaged by fire or other casualty or act of God to the extent that the cost of restoration to the condition in which it was before the occurrence shall exceed 50 per cent of the cost of restoration of the entire building new, shall not be restored unless said building or structure and the use thereof shall conform to all the regulations of the district in which it is located. In the event such damage or destruction is less than 50 per cent of the cost of restoration of the entire building new, no repairs or reconstruction shall be made unless such restoration is started within one year from date of the partial destruction and is diligently prosecuted to completion.

6.4-5 Discontinuance of Use of Non-Conforming Building or Structure. A building, structure or portion thereof, all or substantially all of which is designed or intended for a use which is not permitted in the district in which it is located, which is or hereafter becomes vacant and remains unoccupied or is not used for a continuous period of one year, shall not thereafter be occupied or used except by a use which conforms to the use regulations of the district in which it is located.

6.4-6 Expansion of Use in Non-Conforming Building. The non-conforming use of part of a building or structure, all or substantially all of which is designed or intended for a use not permitted in the district in which it is located, may be extended throughout the building or structure in which said use is presently located, but no changes or structural alterations shall be made unless such changes or structural alterations and the use thereof conform to all the regulations of the district in which the building or structure is located, and such expansion shall not extend or otherwise modify the provision for amortization applicable to such building or structure and use thereof as provided in sub-section 6.4-8 hereof.

6.4-7 Change of Use in Non-Conforming Building. The non-conforming use of a building or structure, all or substantially all of which is designed or intended for a use not permitted in the district in which it is located, may be changed to a use permitted in the same district as the non-conforming use which presently occupies the building or structure or to a use permitted in a more restrictive district, but no such change shall extend or otherwise modify the provisions for elimination of such non-conforming building or structure and the use thereof as provided in subsection 6.4-8 hereof. For the purpose of this subsection only, the R1 District shall be considered the most restrictive and the M3 District the least restrictive district.

6.4-8 Elimination of Non-Conforming Buildings and Structures. Any structure or building, all or substantially all of which is designed or intended for a use not permitted in the district in which it is located shall be removed and its use thereafter cease, or shall be converted to a building or structure designed or intended for a use permitted in the district in which it is located, in accordance with the following amortization schedules:

(1) No building designed or intended for a use which is a permitted use in the B1-1 to B1-5 Districts inclusive and which is and remains occupied by such a use shall be subject to the provisions of this Section 6.4-8.

(2) Buildings Less than \$5,000 Valuation:

Assessed Valuation of Building or Structure at Effective Date of this Comprehensive Amendment, or When Erected, Whichever Last Occurs.

	Years
Assessed valuation under \$2,000.	Thirteen years from the date of adoption of this comprehensive amendment.
Assessed valuation at least \$2,000 but not more than \$5,000.	Thirteen years from the date of adoption of this comprehensive amendment.

(Amend. Coun. J. 11-23-67, p. 1303; 1-31-69, p. 4990.)

(3) In all Residence Districts any building or structure, other than those specified in paragraphs (1) and (2) of this subsection 6.4-3, all or substantially all of which is designed or intended for a use permitted only in one of the Business, Commercial or Manufacturing Districts, shall be removed or it shall be altered and converted to a building or structure designed for a use permitted in the district in which it is located within six months after the termination of the respective periods of time set out hereinafter, which periods are hereby established as a reasonable amortization of the normal, useful life of each class of building and type of construction above the foundation walls or piers:

—Construction Type I, as described in Sections 49-2 and 49-3 of the Municipal Code of Chicago; 60 years from the date of issuance of the building permit for the construction of either the whole structure or the initial building or initial part thereof, or 40 years after the effective date of this comprehensive amendment, whichever last occurs.

—Construction Type III, as described in Sections 49-4, 49-4.1, 49-4.2 and 49-8 of the Municipal Code of Chicago; 50 years from the date of issuance of the building permit for the construction of either the whole structure or the initial part thereof, or 35 years after the effective date of this comprehensive amendment, whichever last occurs.

—Construction Type II and Type IV, as described in Sections 49-3, 49-5 and 49-8 of the Municipal Code of Chicago; 40 years from the date of the issuance of the building permit for the construction of either the whole structure or the initial building or initial part thereof, or 25 years after the effective date of this comprehensive amendment, whichever last occurs.

—When two or more constructive types occur in a structure, the least fire-resistant type shall govern as the basis for amortization.

—If all or substantially all of the improvements to land consist of improvements below or at ground level; 40 years from the date of the issuance of the improvement permit, or 25 years after the effective date of this comprehensive amendment, whichever last occurs.

(4) Any sign which is located in a Residence District and which does not conform to all the regulations of such Residence District in which it is located, shall be removed or shall be altered or converted to a sign permitted in the district in which it is located within 13 years from the date of adoption of this comprehensive amendment. (Amend. Coun. J. 11-28-67, p. 1303; 1-31-69, p. 4990.)

(5) If, prior to the adoption of this comprehensive amendment, substantially all of a non-conforming building or structure has been reconstructed, rebuilt or structurally altered, or if an addition at least equal in size or assessed value has been structurally attached thereto, the normal useful life of such building is hereby fixed in accordance with the foregoing schedule from the date of the issuance of the building permit for such reconstruction or addition.

(6) Any building or structure which is located in a Business District, except B7, and which is designed or intended for a use permitted only in the B7, Commercial

or Manufacturing Districts, shall be removed or shall be altered, remodeled and converted for a permitted use within six months after the termination of the normal useful life of such building, which is hereby established in accordance with the respective amortization periods set out in paragraphs (2) or (3) of this Section 6.4-8.

(7) The non-conforming use of a building or structure all or substantially all of which is designed or intended for a use not permitted in the district in which it is located and which building or structure is required to be removed or altered, remodeled or converted by paragraph (3) or paragraph (6) of this section 6.4, shall be terminated and said use shall not be operated on the premises after said building or structure is removed, altered, remodeled or converted.

(8) Where the application of the amortization schedule of paragraphs (2) or (3) of this subsection 6.4-8 would cause two or more buildings or structures in common ownership or possession and located upon the same lot or adjoining lots or parcels of land to be removed or reconstructed at different periods, the Board of Appeals shall have the authority, upon petition, to extend the amortization period for not more than the longest period permitted one of the buildings or structures.

6.4-9 Condemnation of Non-Conforming Buildings and Structures.

(1) The City of Chicago, at any time, and from time to time, by ordinance duly enacted and in accordance with the authority vested in it by Article 73-11 of Chapter 24 of the Statutes of the State of Illinois, (a) may acquire by condemnation any non-conforming building or structure, all or substantially all of which is designed or intended for a use not permitted in the district in which it is located, and all land which is necessary or appropriate for the rehabilitation or redevelopment of the area blighted by such non-conforming building or structure; (b) may remove or demolish all such non-conforming buildings and structures so acquired; (c) may hold and use any remaining property for public purposes; and (d) may sell, lease or exchange such property as is not held for public purposes, subject to the provisions of this comprehensive amendment, or any amendment hereto.

(2) No such acquisition by condemnation shall be made until such time as the Department of Development and Planning, at the request of the City Council, or upon its own initiative, has made a study of the area within which such non-conforming building or structure is located and has filed a written report on such study with the Committee on Buildings and Zoning of the City Council. (Amend. Coun. J. 3-16-66, p. 6468.)

Non-Conforming Use of Buildings

6.5 The lawfully existing non-conforming use of part or all of a building or structure, all or substantially all of which building or structure is designed or intended for a use which is permitted in the district in which it is located may be continued subject to the following provisions:

6.5-1 Expansion of a Non-Conforming Use. The non-conforming use of part of a building or structure, all or substantially all of which building or structure is designed or intended for a use permitted in the district in which it is located, may be expanded or extended into any other portion of such building or structure.

6.5-2 Discontinuance. If a non-conforming use of a building or structure, all or substantially all of which building or structure is designed or intended for a use permitted in the district in which it is located, is discontinued for a period of six consecutive months, it shall not be renewed and any subsequent use of the building or structure shall conform to the use regulations of the district in which the premises are located.

6.5-3 Change of a Non-Conforming Use. No non-conforming use shall be changed to another non-conforming use when such non-conforming use is located in a building or structure, all or substantially all of which building or structure is designed or intended for a permitted use.

6.5-4 Elimination of Non-Conforming Uses.

(1) In all Residence Districts any use lawfully existing at the adoption of this comprehensive amendment but permitted only in the B2, B3, B4, B5, B6 and B7 Districts, the Commercial Districts or the Manufacturing Districts, and which use is located in a building, all or substantially all of which is designed or intended for a residential purpose or for a residential accessory purpose, shall be entirely discontinued and shall thereafter cease operation in accordance with the following amortization schedule:

Description of Use	Amortization Period
(a) Uses permitted in the B2 and B3 Business Districts.	15 years from the date of adoption of this comprehensive amendment.

(b) Uses permitted only in the B4, B5, B6 and B7 Districts, the Commercial Districts and the Manufacturing Districts.

(Amend. Coun. J. 11-28-67, p. 1303; 1-31-69, p. 4990.)

(2) In all Business Districts, except B7, any use lawfully existing at the adoption of this comprehensive amendment but permitted only in the B7, Commercial or Manufacturing Districts and located in a building, all or substantially all of which is designed or intended for a use permitted in a Business District, except B7, shall be entirely discontinued and shall thereafter cease operation 15 years from the date of adoption of this amendment.

(3) The non-conforming use of a building or structure all or substantially all of which is designed or intended for a use not permitted in the district in which it is located and which building or structure is required to be removed or altered, remodeled or converted by paragraph (3) or paragraph (6) of Section 6.4 of this Article 6, shall be terminated and said use shall not be operated on the premises after said building or structure is removed, altered, remodeled or converted.

Non-Conforming Use of Land

6.6 The non-conforming use of land not involving a structure or building, or in connection with which any building or structure thereon is incidental or accessory to the principal use of the land, may be continued, subject to the following provisions:

6.6-1 Expansion. A non-conforming use of land shall not be expanded or extended beyond the area it occupies.

6.6-2 Discontinuance. If the non-conforming use of land is discontinued for a period of six consecutive months, it shall not thereafter be renewed, and any subsequent use of the land shall conform to the regulations of the district in which the land is located.

6.6-3 Change of Use. The non-conforming use of land shall not be changed to any other use except to a use permitted in the district in which the land is located.

6.6-4 Elimination of Non-Conforming Use of Land.

(1) The non-conforming use of land shall be discontinued and cease thirteen years from the date of the adoption of this amendment in each of the following cases:

- where no buildings or structures are employed in connection with such use;
- where the only buildings or structures or other physical improvements employed are accessory or incidental to such use or have an assessed valuation of less than \$2,000; or

—where such use is maintained in connection with a conforming building or structure; except that inadequate off-street parking facilities used in connection with a building the use of which complies with the requirements of the district in which it is located, may be continued for so long as the premises are used for a permitted use. (Amend. Coun. J. 11-28-67, p. 1303; 1-31-69, p. 4990.)

(2) A non-conforming use of land which is accessory to the non-conforming use of building or structure shall

be discontinued on the same date the non-conforming use of the building or structure is discontinued.

(3) Improvements underground or substantially at ground level, which comprise all or substantially all of the improvements employed in a non-conforming use of land and which have an assessed value in excess of \$2,000, shall be deemed a non-conforming structure and shall be subject to the applicable provisions of Section 6.4-8 (2) hereof.

→ Corona, California (selected passages only)

SECTION 9-1-630: NON-CONFORMING LOTS, BUILDING AND USES

Where lots, buildings, or uses legally existing on the effective date of this Ordinance are not in conformity with the provisions of this Ordinance, it is the intent and purpose of this Section to declare such lots, buildings, and uses to be non-conforming, for the purpose of protecting the public health, safety, and general welfare.

A. "GROUP A" NON-CONFORMING LOTS, BUILDINGS AND USES

"Group A" non-conforming lots, buildings and uses are those which are generally not detrimental in the zone; they may be continued and under certain conditions altered or enlarged.

1. "Group A" Non-Conforming Lots are those lots which do not conform to the LOT AREA and LOT DIMENSION standards for the zone in which they are located. The uses permitted in the zone shall be permitted on such lots, subject to all other provisions of the zone.

2. "Group A" Non-Conforming Buildings are those buildings which do not conform to the BUILDING HEIGHT, YARDS, DISTANCE BETWEEN BUILDINGS, FLOOR AREA RATIO, and MINIMUM SIZE OF DWELLING UNIT standards for the zone in which they are located. Such buildings shall be permitted to continue, provided that any addition, alterations, or enlargement thereto shall comply with all provisions of the zone. The alteration of buildings in established setback areas shall not be permitted without the prior approval of the City Council. When any "Group A" non-conforming building is for any reason removed from the land, all future buildings or structures erected on such land shall conform to all provisions of the zone.

3. "Group A" Non-Conforming Uses

a. In residential zones, "Group A" non-conforming uses of buildings are those uses which do not conform to the LOT AREA PER DWELLING UNIT standards for the zone in which they are located. Buildings containing such uses may be altered, provided that the dwelling or rental unit density shall not be increased.

b. In commercial and industrial zones, "Group A" non-conforming uses of buildings are those uses which are not listed as permitted but which are of the same general type (i.e. commercial uses in a commercial zone) and are determined by the Planning Commission to be not detrimental to the public health, safety, and general welfare and to neighboring uses as provided for in Section 9-1-600. Such uses may be continued, altered, or enlarged, subject to the provisions of the zone.

B. "GROUP B" NON-CONFORMING BUILDINGS AND USES

"Group B" non-conforming buildings and uses are those which are detrimental to the zone. They shall be terminated or removed within a specified period. Said period shall be measured from the effective date of this Ordinance or from the date such use of building becomes non-conforming, whichever is later.

1. "Group B" Non-Conforming Buildings

a. "Group B" Non-Conforming Buildings are as follows:

(1) In residential zones, industrial buildings, and commercial buildings other than those specifically permitted in the zone shall be considered as "Group B" non-conforming.

(2) In commercial and industrial zones, residential buildings not specifically permitted in the zone shall be considered as "Group B" non-conforming.

b. The following time limits shall be applied to all "Group B" non-conforming buildings. This time table is deemed to provide for the amortization of the affected buildings, on or before the termination of said period such buildings shall be removed from the land:

(1) Type 1 and 2 construction* - twenty (20) years.

(2) Type 3 and 4 construction* - fifteen (15) years (fire resistant).

(3) Type 5 construction* - ten (10) years.

c. When said non-conforming building is removed from the land, at or before the end of the amortization period, every future building and use shall be in conformity with the provisions of this Ordinance.

2. "Group B" Non-Conforming Uses.

a. "Group B" non-conforming uses shall be those uses in any zone which are expressly prohibited and those other uses which are not provided for in said zone. Such non-conforming use shall not be expanded or extended into any other portion of the building, and if such use is discontinued for a period of one hundred eighty (180) days, any future use of said building shall be in conformity with uses permitted in the zone.

b. A "Group B" non-conforming non-residential use in a "Group B" non-conforming building may continue for the duration of the building and may be expanded or extended throughout said building, provided no structural alterations except those required by law or ordinance shall be made therein. Further, if no structural alterations are made, a non-conforming use in such a building may be changed to permit a similar or more restricted type of non-conforming use, provided that said new use be approved by the Planning Commission.

C. NON-CONFORMING USE OF THE LAND

1. A non-conforming use of land, where no buildings or structures are involved, or the only buildings employed are accessory or incidental to such use, when deemed by the Council to be detrimental to the public health, safety, and welfare, shall within five (5) years be completely terminated or so altered that it will be in conformity with the provisions of the zone.
2. Such non-conforming use of land shall not be expanded in any way either on the same or adjoining property.
3. If such non-conforming use of land is discontinued for a period of one hundred eighty (180) days, any further use of the land shall be in conformity with this Ordinance. (Ord. 1209; 7-6-70)

* As defined in the Building Code.

N. EXTENSION BY PERMIT OF AMORTIZATION PERIODS FOR NON-CONFORMING USES, BUILDINGS, OUTDOOR STORAGE AND PERFORMANCE STANDARDS: Except as otherwise provided in Section 9-1-468.4 of Chapter 1, Title IX of the Code, and notwithstanding anything to the contrary stated in Subsection L of Section 9-1-455, Subsection b of Section 9-1-630-B-1 and Subsections C, F, G and K of Section 9-1-630 of Chapter 1, Title IX of the Code, any automobile service station, any Group B building, any use, any outdoor storage and any performance standard, as described in the aforesaid subsections, which as of the effective date of this Ordinance is nonconforming, may be granted a permit by the Planning Commission to continue in a nonconforming status for a certain period as provided by the Commission subject to reasonable conditions imposed thereon by the Planning Commission.

Before a permit may be granted for the continuation of the nonconforming status in question, the Commission or Council, upon appeal to it, shall make findings from the evidence, as submitted, that the subject nonconforming building, use, storage area or performance standard (hereinafter referred to as "subject") is a nonconforming Group B building, use, storage area or performance standard, as described in the pertinent subsections of Section 9-1-630; the continuation of the nonconforming status in question is reasonably compatible with the area immediately surrounding the location of said subject, is not detrimental or undesirable to the public convenience or general welfare of persons residing or working in the neighborhood thereof and is not injurious to properties immediately surrounding said subject.

Any person desiring a permit, hereunder to continue a nonconforming status shall make written application therefor to the Planning Commission on a form prepared and provided by the Commission Secretary. Such application shall require, among other things, an acknowledged statement by the applicant as to the date on which the subject of the nonconforming status commenced.

The proceedings for application and consideration of said permit shall be in accordance with the applicable terms and provisions of Subsections C, D, E, F, H and K of Section 9-1-640 of Chapter 1, Title IX of the Code and shall be quasi-judicial in nature. Whenever the phrase "Conditional Use Permit" or term "permit" is used in said Subsections, it shall be deemed to mean for the purposes of this Subsection a permit applied for or granted under this Subsection. (Ord. 1276; 2-8-72)

SECTION 9-1-640: CONDITIONAL USE PERMIT

A. PURPOSE

The Conditional Use Permit is intended for those types of land uses which require special consideration in a particular zone or in the City as a whole due to: The size of the area needed for full development of such use; the unusual traffic, noise, vibration, smoke or other problems incidental to its operation; special locational requirements not related to zoning; or to the effect that such uses may have on property values, health, safety, and welfare in the neighborhood or in the community as a whole. It is also for uses whose approximate location is indicated on the General Plan but whose exact location and arrangement must be carefully studied. In granting the permit the Commission may require certain safeguards and establish certain conditions to protect the health, safety and general welfare of the Community.

→ Los Angeles County, California
 (Selected passages only)

**SECTION 509.2. NONCONFORMING USES AND STRUCTURES —
 REGULATION OF**

The following regulations shall apply to all nonconforming uses:

(a) Continuation of Nonconforming Uses

A nonconforming use may be continuously maintained provided there is no alteration or addition to any structure nor any enlargement of area, space or volume occupied by or devoted to such use, except as otherwise provided in this Ordinance.

(b) Additions to a Nonconforming Use.

This Section does not authorize the extension, expansion, or enlargement of the area of land or the area within a building or structure devoted to a nonconforming use or permit the addition of land, buildings or structures used in conjunction with such nonconforming use except:

(1) To the extent required by a subsequently enacted or subsequently adopted law, ordinance or regulation and the Director so finds. Such additions as are permitted by this subsection shall not be construed to extend the termination date of the subject nonconforming use.

(2) Additions may be made to a nonconforming dwelling unit without requiring any additional garage, carport, parking space or driveway paving, provided that such additions neither increase the number of families that can be housed in such structure, nor occupy the only portion of an area which can be used for required garages, carports, parking space or access thereto. Such additions as are permitted by this subsection shall not be construed to extend the termination date of the subject nonconforming use.

(c) Additions to a Nonconforming Building or Structure.

Additions may be made to a nonconforming building or structure which is not in violation of any provisions of this Ordinance and is nonconforming only because it does not meet the following standards of development as provided herein:

(1) Yards provided such addition or expansion is developed pursuant to the yard requirements of this Ordinance.

(2) Building height limits, but not including floor area ratio or maximum lot coverage provisions, provided such addition or expansion is developed pursuant to the height requirements of this Ordinance.

(3) Access and paving width of access, improvement and landscaping of parking areas provided such addition or expansion shall be developed pursuant to the provisions of Article 3 (Chapter 7) of this Ordinance. Where the amount of parking provided prior to such addition is sufficient to comply with said Article 3 after such expansion it shall be deemed to comply with this subsection.

(4) Such additions as are permitted by this subsection shall not be construed to authorize the modification of any provision of this Ordinance nor extend the termination date of the subject nonconforming use.

(d) Substitution of a Conforming Use in a Structure. Nonconforming Due to Standards Other Than Parking.

A use which is not in violation of any provisions of this Ordinance and is nonconforming only because it does not meet the requirements of the standards of development, other than automobile parking space requirements, may be changed to a use permitted in the zone. Any such change of use shall not extend the termination date established for the original nonconforming use.

(e) Substitution of a Conforming Use in a Structure Nonconforming Due to Parking.

A use which is not in violation of any provisions of this Ordinance and is a nonconforming use only because it does not meet automobile parking space requirements may be changed to a use permitted in the zone having the same or a lesser parking requirement. Any such change of use shall not extend the termination date established for the original nonconforming use.

(f) Buildings and Structures Under Construction.

Any building or structure, for which a valid building permit has been issued prior to the operative date of this Ordinance or any amendment thereto, may be completed and used in accordance with the Provisions of this Ordinance provided:

(1) That such construction or the proposed use of such building or structure under construction is not in violation of any other ordinance or law at said operative date; and

(2) That such building or structure is completed within:

(a) One (1) year from said operative date, if two (2) stories or less in height and not more than seventy thousand (70,000) square feet in floor area, except that one (1) additional month shall be permitted for each fifteen thousand (15,000) square feet in excess of said seventy thousand (70,000) square feet.

(b) One and one-half (1½) years from said operative date, if three (3) to six (6) stories in height and not more than one hundred thousand (100,000) square feet in floor area, except that one (1) additional month shall be permitted for each fifteen thousand (15,000) square feet in excess of said one hundred thousand (100,000) square feet.

(c) Two (2) years from said operative date if seven (7) stories or more in height and not more than one hundred and fifty thousand (150,000) square feet in floor area except that one (1) additional month shall be permitted for each fifteen thousand (15,000) square feet in excess of said one hundred and fifty thousand (150,000) square feet.

(3) That such building or structure is completed in accordance with the plans and specifications on which such building permit was issued.

(g) Repair of Damaged or Partially Destroyed Nonconforming Buildings or Structures.

Any nonconforming building or structure or any building or structure containing a nonconforming use which is damaged or partially destroyed may be restored to the condition in which it was immediately prior to the occurrence of such damage or destruction, provided:

(1) That the cost of reconstruction does not exceed fifty (50) percent of the total market value of the building or structure as reflected by the current assessment roll immediately prior to the time of damage or destruction. Such cost shall not include the land or any factor other than the building or structure itself; and

(2) That all such reconstruction shall be started within one (1) year from the date of damage and be pursued diligently to completion; and

(3) That reconstruction shall not extend the termination date of such nonconforming building or structure specified in this Ordinance.

(h) Maintenance of Nonconforming Buildings or Structures.

When maintenance or routine repairs within any twelve (12) month period exceed twenty-five (25) percent of the current market value of an existing building or structure as reflected by the current assessment roll, such building or structure shall be made to conform to the requirements for new buildings or structures as specified by this Ordinance. This provision does not apply to additions permitted by this Article or to Section 736 of this Ordinance.

(i) **Limitation on Additional Development.**
 No new use, building or structure shall be developed on any lot or parcel of land containing a nonconforming use, building or structure unless the following conditions prevail:

- (1) That each existing and proposed use, building or structure, including appurtenant structures, improvements and open space, will be located on a lot or parcel of land having the required area as provided in Article 2 of Chapter 7; and
- (2) That such lot or parcel of land can be divided into smaller lots or parcels of land each of which when considered as a separate lot or parcel of land will contain not less than the required area; and
- (3) That each such lot or parcel of land so divided into smaller lots or parcels of land will comply with the requirements of this Ordinance as to the number and location of structures.

SECTION 509.3. NONCONFORMING USES AND STRUCTURES — TERMINATION OF.

(a) **Termination by Discontinuance.**
 Discontinuance of a nonconforming use as indicated herein shall immediately terminate the right to operate such nonconforming use, except when extended as otherwise provided in this Ordinance:

- (1) Changing a nonconforming use to a conforming use.
- (2) Discontinuance of a nonconforming use for a consecutive period of two (2) or more years.

(b) **Termination by Operation of Law.**
 The following nonconforming uses and structures shall be discontinued and removed from their sites within the time specified in this Section, except when extended or revoked as otherwise provided in this Ordinance:

- (1) Where the property is unimproved, one (1) year.
- (2) Where the property is unimproved except for structures of a type for which said Ordinance No. 2225 does not require a building permit, three (3) years.
- (3) Where the property is unimproved except for structures which contain less than one hundred (100) square feet of gross floor area, or where such structures have a total market value of five hundred dollars (\$500) or less as reflected by the current assessment roll, three (3) years.

(4) **Signs:**
 (5) Where a nonconforming use is carried on in a conforming structure five (5) years except where the provisions of subsection 3 apply.

(6) In other cases twenty (20) years from effective date of the ordinance or amendment thereto establishing said nonconforming status, and for such longer time so that the total life of the structure from the date of construction, based on the type of construction as defined by the Building Code, will be as follows:

- (a) Type IV and Type V buildings (light incombustible frame and wood frame) used as:
 - (1) One-family dwellings, two-family dwellings, three-family dwellings, apartment houses, and other buildings used for residential occupancy, thirty-five (35) years;
 - (2) Stores and factories, twenty-five (25) years;
 - (3) Any other building not herein enumerated, twenty-five (25) years.
- (b) Type III buildings (heavy timber construction and ordinary masonry) used as:
 - (1) One-family dwellings, two-family dwellings, three-family dwellings, apartment houses, offices and hotels, forty (40) years;
 - (2) Structures with stores below and residences, offices or a hotel above, forty (40) years;
 - (3) Warehouses, stores and garages, forty (40) years;
 - (4) Factories and industrial buildings, forty (40) years.
- (c) Type I and Type II buildings (fire resistive) used as:
 - (1) One-family dwellings, two-family dwellings, three-family dwellings, apartment houses, offices and hotels, fifty (50) years;
 - (2) Theaters, warehouses, stores and garages, fifty (50) years;
 - (3) Factories and industrial buildings, fifty (50) years.

→ Santa Cruz County, California (Selected passages only)

13.04.470 NONCONFORMING USES.

(a) **Purpose.** Any nonconforming use within the County is detrimental to the orderly development of the County and detrimental to the general welfare of persons and property. It is the intent of this Chapter that nonconforming uses shall be eliminated as rapidly as may be done.

1. **Nonconforming Use of Land - Continuation.** The lawful use of land existing on the effective date of this Chapter (August 13, 1958), although such use does not conform to the regulation specified by this Chapter for the district in which such land is located, may

be continued, provided that no such use shall be enlarged or increased nor be extended to occupy a greater area than that occupied by such use at the time of the adoption of this Chapter. (August 13, 1958), and that if any such use ceases or be abandoned, as hereinafter provided, the subsequent use of such land shall be in conformity with the regulations specified by this Chapter for the district in which such land is located.

2. Nonconforming Use - Termination by Board. A nonconforming use may be ordered to be terminated by order of the Board of Supervisors upon recommendation of the Planning Commission within a period to be specified in such order which order shall be issued only after a public hearing by the Planning Commission after 15 days' written notice to such nonconforming user. If the nonconforming user has not made a substantial investment in furtherance of such use, or the investment can be substantially utilized or recovered through a then permitted use, such order may require complete termination of the nonconforming use within a minimum of one year after the date of the order. In making its recommendation, the Planning Commission shall consider the total cost of land and improvements, the length of time, the adaptability of the land and improvements to a then permitted use, the cost of moving and re-establishing the use elsewhere and other relevant factors.

Where a nonconforming use involves the removal of natural products, it shall be considered in accordance with Chapter 14.06 of the Santa Cruz County Code.

A failure to comply with an order of termination by the Board of Supervisors shall constitute such nonconforming use a violation of this Chapter and a public nuisance subject to abatement in accordance with Chapter 1.08 of this Code.

3. Nonconforming Signs - Modification or Removal. Owners of nonconforming signs shall have the following times within which to remove, alter, or otherwise make such signs conform to this Chapter:

(b) The lawful use of a building existing at the time of adoption of this Chapter may be continued, although such building and/or use does not conform to the regulations specified for the district in which such building is located.

(c) Any use for which a use permit is required by the terms of this Chapter shall be considered a nonconforming use unless and until a Use Permit is obtained in accordance with Section 13.04.410 hereof.

(d) If at any time any building in existence on the effective date of this Chapter which does not conform to the regulations for the district in which it is located be damaged or destroyed by fire, explosion, act of God, or act of the public enemy, to the extent of more than 75% of the assessed value thereof, according to the assessment by the Assessor for the fiscal year during which such destruction occurs, the land and building shall be subject to all the regulations specified by the Chapter for the district in which such land and building are located.

(e) Cessation of Use - Effect. If the nonconforming use of a building ceases for a continuous period of six months, or is abandoned, then without further action by the County, the said building and the land on which such building is located shall be subject to all of the regulations of this Chapter for the district in which such land and buildings are located.

13.04.471 NONCONFORMANCE WITH PROVISIONS OF SECTION 13.04.236.25.
Any use listed under Section 13.04.205.25.1 or Section 13.04.205.25.2, which is located in an "M-1" or "M-2" District which is found by the County Planning Commission not to comply with the requirements of Section 13.04.236.25 shall be a nonconforming use. The Planning Commission's determination that such use is nonconforming shall be made after public hearing held more than 15 days after written notice to the user.

In order to be conforming, it shall be necessary to obtain a use permit pursuant to Section 13.04.410 et seq. Application for the use permit must be made within three months of the date the Planning Commission determines the use to be nonconforming. If an application for a use permit is not filed within the three month period, the nonconforming use shall thereafter be subject to the abatement proceedings set forth in Section 13.04.410, provided that no additional public hearing shall be required by the Planning Commission prior to making its recommendation to the Board of Supervisors.. (Ord. 1087, 5/18/65)

→ Baltimore, Maryland
(Selected passages only)

CHAPTER 8 NON-CONFORMANCE

Purpose

This zoning ordinance establishes separate districts, each of which is an appropriate area for the location of the uses and structures which are permitted in that district. It is necessary and consistent with the establishment of those districts that all uses and structures incompatible with permitted uses and structures be strictly regulated and properly controlled. It is the purpose of this chapter to provide for the regulation of non-conforming uses and non-complying structures existing in the various districts.

Since non-conforming uses and non-complying structures substantially and adversely affect the maintenance, development, use, and taxable value of other property in the district, a time limit, or tolerance period, has been placed upon the continuance of certain such uses having serious blighting effects on adjacent uses. In such cases, the adoption of a reasonable amortization program permits the owner to gradually make plans during a period when he is allowed to continue the use of the property, while at the same time assuring the public that the district in which the non-conforming use exists will eventually benefit from a substantial uniformity of uses within such district.

For regulations applying to non-conforming signs, see Chapter 10 of this ordinance.

8.0-1 Authority to Continue

Any non-conforming use or structure, or any non-complying structure, may be continued, subject to the regulations of this chapter.

8.0-2 Non-Conforming Use of Land (CLASS I)

This section is confined to the regulation of non-conforming uses of land, which uses shall be known as Class I.

a. Class I non-conforming uses shall include: any non-conforming use of land where no structure is located on the land; or any non-conforming use of land where the use of a structure is accessory to such non-conforming use; or any non-conforming use of land where a structure occupies a portion of the land and the non-conforming use of land is not accessory to a use of the structure.

f. *Termination.* A Class I non-conforming use located in a Residence, Office-Residence, or B-1, District shall be discontinued and cease not later than three years after the effective date of this subsection. Provided, further, that when a district is hereafter reclassified as Residence, Office-Residence, or B-1, any Class I non-conforming use located in such district shall be discontinued and cease within three years after the effective date of the reclassification.

Note: Amended by Ord. No. 791, approved February 10, 1975.

8.0-3 Non-Conforming Structures and Uses Thereof (CLASS II)

This section is confined to the regulation of non-conforming structures and uses thereof, which structures and uses shall be known as Class II.

a. Class II non-conforming structures and uses thereof shall include any structure all or substantially all of which is designed and erected for a use not permitted in the district in which it is located, and the uses thereof, including any non-conforming use of land accessory thereto.

8.0-4 Non-Conforming Uses of Structures (CLASS III)

This section is confined to the regulation of non-conforming uses of structures, which uses shall be known as Class III.

a. Class III non-conforming uses shall include: any non-conforming use of part or all of a structure, which structure is designed and erected primarily for a use permitted in the district in which it is located, including any non-conforming use of land accessory thereto; and any non-conforming use of land or structures not regulated as either Class I or Class II.

8.0-6 Non-Conforming Status of Certain Uses

e. Notwithstanding the provisions of this chapter, any lawfully established restaurant or tavern operating with live entertainment or dancing, as an accessory use thereto, in a B-2 District at the time of enactment of this comprehensive ordinance may be continued and shall not be construed to be non-conforming as to use.

f. Massage salons located in Residence, Office-Residence, B-1, B-2 and B-3 Districts shall be discontinued and cease not later than eighteen months after the effective date of this subsection. Provided, further, that when a district is hereafter reclassified as Residence, Office-Residence, B-1, B-2 or B-3, any such massage salon located in such district shall be discontinued and cease within eighteen months after the effective date of the reclassification.

Note: Added by Ord. No. 804, approved February 21, 1975.

g. Class III non-conforming uses authorized by the Board in R-7, R-8, R-9, and R-10 Districts shall be reviewed by the Board 36 months after authorization and every 36 months thereafter.

Note: Added by Ord. No. 155, approved August 12, 1976.

8.0-7 The Exercise of Authority by the Board

The Board, after public notice and posting, may determine and authorize such changes, alterations, and extensions to non-conforming uses and structures, and may authorize the continuance of non-complying dwelling units in non-complying structures, in harmony with the purpose and intent of this ordinance, only in the specific instances set forth herein, where the Board makes findings of fact in accordance with the guides, standards, and limitations hereinafter prescribed and, further, finds that such authorization will not be contrary to the public interest.

a. *Application.* An application for any such change, alteration, extension, or continuance shall be filed with the Zoning Administrator on a prescribed form. The application shall be accompanied by such plans and data as required by the Board pursuant to general rule.

APPENDIX B —
EXAMPLES OF U.S. STATE ENABLING LEGISLATION

- Florida
- Oklahoma
- Illinois

→ Excerpt from:
Florida Municipal Zoning Enabling Law

§ 176.02 Municipalities may regulate building, density of population, and the location and use of buildings, structures and land and water

For the purpose of promoting health, safety, morals, or the general welfare of the communities and municipalities of the state, said municipalities may regulate and restrict the height, number of stories, and size of buildings and other structures, the percentage of lot that may be occupied, the size of yards, courts, and other open spaces, the density of population, and the location and use of buildings, structures, and land and water for trade, industry, residence or other purposes.

Wherever the governing body of any municipality shall elect to exercise any of the powers granted to it under this chapter, said powers shall be exercised in the manner hereinafter prescribed and in accordance with the charter of such municipality.

→ Excerpt from:
Oklahoma State Enabling Law

19 § 863.16

§ 863.16 Existing nonconforming uses.—
The lawful use of a building, structure or premises as such existed at the time of the adoption and recording of any regulation affecting it, may be continued, although such use does not conform with the provisions of such regulation. The Board, as it affects its jurisdiction, may provide for the termination of nonconforming uses either by specifying the period or periods within which they shall be required to cease, or by providing a formula or formulas whereby the compulsory termination of nonconforming use shall be so fixed as to allow a reasonable period for the recovery of amortization of the investment in the nonconformance, provided, that in each instance any such action of the Board shall be taken only after public notice and hearing thereon has been had before the Commission and that Commission's recommendations with respect thereto certified to the Board. Laws 1955, p. 170, § 16.

Extract from:
→ Illinois Enabling Zoning Legislation

DIVISION 13. Zoning

Paragraph 11-13-1. Objectives — Classification, regulation and location of uses — Nonconforming uses

To the end that adequate light, pure air, and safety from fire and other damages may be secured, that the taxable value of land and buildings throughout the municipality may be conserved, that congestion in the public streets may be lessened or avoided, that the hazards to persons and damage to property resulting from the accumulation or runoff of storm or flood waters may be lessened or avoided, that the public health, safety, comfort, morals, and welfare may otherwise be promoted, and to insure and facilitate the preservation of sites, areas, and structures of historical, architectural and aesthetic importance; the corporate authorities in each municipality have the following powers:

- (1) To regulate and limit the height and bulk of buildings hereafter to be erected;
- (2) to establish, regulate and limit, subject to the provisions of Division 14 of this Article 11, the building or set-back lines on or along any street, traffic-way, drive, parkway or storm or floodwater runoff channel or basin;
- (3) to regulate and limit the intensity of the use of lot areas, and to regulate and determine the area of open spaces, within and surrounding such buildings;
- (4) to classify, regulate and restrict the location of trades and industries and the location of buildings designed for specified industrial, business, residential, and other uses;
- (5) to divide the entire municipality into districts of such number, shape, area, and of such different classes (according to use of land and buildings, height and bulk of buildings, intensity of the use of lot area, area of open spaces, or other classification) as may be deemed best suited to carry out the purposes of this Division 13;
- (6) to fix standards to which buildings or structures therein shall conform;
- (7) to prohibit uses, buildings, or structures incompatible with the character of such districts;
- (8) to prevent additions to and alteration to or remodeling of existing buildings or structures in such a way as to avoid the restrictions and limitations lawfully imposed under this Division 13; and
- (9) to classify, to regulate and restrict the use of property on the basis of family relationship, which family relationship may be defined as one or more persons each related to the other by blood, marriage or adoption and maintaining a common household.

The powers enumerated may be exercised within the corporate limits or within contiguous territory not more than one and one-half miles beyond the corporate limits and not included within any municipality. However, if any municipality adopts a plan pursuant to Division 12 of Article 11 which plan includes in its provisions a provision that the plan applies to such contiguous territory not more than one and one-half miles beyond the corporate limits and not included in any municipality, then no other municipality shall adopt a plan that shall apply to any territory included within the territory provided in the plan first so adopted by another municipality. No municipality shall exercise any power set forth in this Division 13 outside the corporate limits thereof, if the county in which such municipality is situated has adopted "An Act in relation to county zoning", approved June 12, 1935, as amended. If a municipality adopts a zoning plan covering an area outside its corporate limits, the plan adopted shall be reasonable with respect to the area outside the corporate limits so that future development will not be hindered or impaired. If all or any part of the area outside the corporate limits of a municipality which has been zoned in accordance with the provisions of this Division 13 is annexed to another municipality or municipalities, the annexing unit shall thereafter exercise all zoning powers and regulations over the annexed area.

In all ordinances passed under the authority of this Division 13, due allowance shall be made for existing conditions, the conservation of property values, the direction of building development to the best advantage of the entire municipality and the uses to which the property is devoted at the time of the enactment of such an ordinance. The powers conferred by this Division 13 shall not be exercised so as to deprive the owner of any existing property of its use or maintenance for the purpose to which it is then lawfully devoted, but provisions may be made for the gradual elimination of uses, buildings and structures which are incompatible with the character of the districts in which they are made or located, including, without being limited thereto, provisions (a) for the elimination of such uses of unimproved lands or lot areas when the existing rights of the persons in possession thereof are terminated or when the uses to which they are devoted are discontinued; (b) for the elimination of uses to which such buildings and structures are devoted, if they are adaptable for permitted uses; and (c) for the elimination of such buildings and structures when they are destroyed or damaged in major part, or when they have reached the age fixed by the corporate authorities of the municipality as the normal useful life of such buildings or structures.

APPENDIX C —

ARTICLE 4 OF A MODEL LAND DEVELOPMENT CODE AND
REPORTERS COMMENTARY, THE AMERICAN LAW INSTITUTE,
MAY 1975

APPENDIX C

ARTICLE 4. DISCONTINUANCE OF
EXISTING LAND USES

Part 1

Development Ordinance ProvisionsSection 4-101. Designation of Land Uses to be Discontinued

(1) A local government, in the manner provided in this Article, may require the discontinuance of an existing land use. The discontinuance to be required may include the total or partial demolition of a building or structure, the cessation of any activity that constitutes a land use under this Code, or other action necessary to restore land to its condition prior to all or any particular development.

(2) A local government wishing to discontinue existing land uses shall list the categories of existing land uses to be discontinued in the development ordinance adopted under Article 2. The ordinance shall state whether the categories are to be discontinued throughout the jurisdiction of the local government or only in specified districts or under specified conditions.

(3) Nothing in this Article limits the power of any local government to proceed against unlawful development under Article 10, or to adopt regulations under other enabling authority requiring cessation of a business, demolition or alteration of a structure, or other change in the use of land.

NOTE

Discontinuance is used as a word of art to include both the cessation of a particular use of land and the removal of all or part of a structure. (The term "land use" is defined in § 1-201(9).) It is not intended that a landowner could be required to replace one land use with another. Thus the demolition of a building and clearance of the rubble could be required but the replacement of the building could not be ordered.

In some cases the land use to be discontinued may include only part of the entire use of the land. As defined in this Code the terms "development" and "land use" apply equally to an entire development or land use and to any of its parts. For example, the discontinuance of one dwelling unit in a three-family dwelling could be ordered.

Illustration: The Village of Harbortown is concerned about the over crowding of older duplex residential buildings. It requires that in buildings containing less than 800 square feet of usable floor area the use of such buildings for more than two dwelling units be discontinued. Owners of such buildings may continue to use them but must discontinue any dwelling units over two.

Section 4-102. Grounds for Requiring Discontinuance

(1) The local government may require that a category of land uses be discontinued only if:

(a) a State or Local Land Development Plan has established a policy of maintaining a particular neighborhood character for a substantial period of time, and the specified category of land use would be inconsistent with the character in that neighborhood;

(b) a special preservation district has been designated under § 2-209 and the specified category of land use would be inconsistent with the character of the district;

(c) a plan for a specially planned area has been adopted under § 2-211, and the specified category of land use is inconsistent with the plan;

(d) development regulations for an Area of Critical State Concern have been adopted under § 7-203 or § 7-204, and the specified category of land use would be inconsistent with those regulations; or,

(e) the category of land uses to be discontinued includes such land uses as are determined by the local governing body to be offensive to the public or to users of neighboring land, and to be performing no essential public function that cannot readily be performed at more appropriate sites in the region. Such determinations may be made, for example, with regard to signs, billboards, automobile graveyards and junkyards. No category of land use may be designated for discontinuance under this paragraph if a Land Development Plan or other official expression of government policy indicates that this category of land use will be compatible with the future development of the area.

(2) No category of land use shall be designated for discontinuance in any area where similar new development could be undertaken upon the issuance of a general development permit.

NOTE

In many cases it is essential to get rid of certain existing uses of land if a desirable pattern of development is to be created or important natural resources are to be conserved. This Article attempts to provide a means for identifying these situations.

In present practice many zoning regulations are only tentative classifications that are subject to future change, rather than fixed and definite prescriptions regarding the character of future development. It is inequitable to require a man to terminate a lawful activity merely because it is inconsistent with such tenuous regulations. Regulations based on detailed study and planning, however, do not share the impermanence that characterizes other land development regulations. Under this Code certain types of regulations can be adopted only after specified elements of study and planning:

1. A local government is authorized under § 3-104 to establish policies regarding the future use of land in various parts of its jurisdiction. These policies are to be embodied in a Local Land Development Plan, and the short-term program established as part of the plan under § 3-105 is to set out the public actions to be taken to implement the plan. Through this process the local government may establish a policy to maintain a specific neighborhood character in a particular area and authorize the elimination of those land uses that conflict with that policy. Similar provisions are applicable to State Land Development Plans under § 8-403.

2. Under § 2-209 a local government may designate districts of historical, archeological, architectural, ecological or scenic significance as "special preservation districts." Such designations must be based either on a land development plan or on a special study. See § 2-209(1)(b).

3. A local government that has adopted a local Land Development Plan may designate "specially planned areas," either on its own motion or on the motion of an applicant, and require that future land uses in the area conform to a precise plan. § 2-211.

4. The State Land Planning Agency may designate Areas of Critical State Concern and establish principles to guide development in the District. § 7-201. Such a designation evidences a definite plan for the future use of the land.

This section permits the local government to order the discontinuance of existing land uses if regulations have been adopted in accordance with one of these procedures. In the absence of such regulations a local government may require the discontinuance of an existing use only if the use is offensive to the public and performs no useful public function that could not be adequately performed at other sites. Examples are given of typical land uses for which such a determination might be made, but it is up to each local governing body to make its own determination in regard to each particular category of land use. Where such a determination is made, it can be presumed that any plan for the future development of the area would prohibit such development unless there is an existing plan or statement of policy to the contrary. The reasonableness of any such determination could of course be contested by seeking review of the enforcement order issued under § 4-202. See § 10-202.

Cross-references: §§ 3-101(n); 4-202; 8-401(n).

Part 2

Procedure To Enforce Discontinuance

Section 4-201. Issuance of Enforcement Notice

(1) The Land Development Agency shall issue an enforcement notice under § 10-201 against each land use designated for discontinuance in the development ordinance.

(2) The enforcement notice shall state, in addition to the matters listed in § 10-201, that application may be made to the Land Development Agency for a hearing under § 10-201(3)(e), and that at such hearing the Agency will consider the eligibility of the land use for an exemption or an extension of time under § 4-202.

NOTE

Under this Section the same procedure is to be used for discontinuing existing uses as is prescribed for enforcement of the ordinance generally. Thus the procedures of Article 10 are incorporated in this Article.

The enforcement notice procedure allows the owner of the property to demand a hearing, which would then be held pursuant to the notice requirements and procedural provisions of § 2-304.

See § 10-201(3). The notice must also inform the property owner of his right to seek an exemption or extension of time under § 4-202.

Cross-references: §§ 4-202(n); 5-101(n); 10-201.

Section 4-202. Issuance of Enforcement Order for Discontinuance

(1) The Land Development Agency shall issue an enforcement order under § 10-202 requiring discontinuance within [one month] of a land use for which an enforcement notice has been issued, unless the Agency finds on the basis of the hearing thereon that the land use is entitled to an exemption or extension of time, or that an interest in the land should be acquired by the local government.

(2) The Land Development Agency may exempt a land use from discontinuance if it finds that:

(a) none of the grounds for discontinuing land uses required under § 4-102 are applicable to the specific land use in question; or

(b) the hardship caused by the discontinuance would outweigh the public benefits thereof, provided that evaluation of the public benefits of discontinuance shall take into consideration benefits that may result from discontinuance of other similar land uses; or

(c) a special development permit to allow continuance of the land use should be granted under Article 2, in which case the Agency shall treat the application for a hearing as an application for a special development permit.

(3) The Land Development Agency may grant an extension of time in order to allow a reasonable time for discontinuance of a land use. In determining a reasonable time the Agency shall take into consideration:

(a) the probable extent of the economic usefulness of the land use;

(b) the urgency of the public purpose requiring discontinuance; and

(c) the cost of discontinuance to the owner.

(4) If the Land Development Agency concludes that the extension of time necessary to provide a reasonable time for discontinuance of a land use would exceed three years, it shall notify the local governing body prior to issuance of the enforcement order so that the local governing body may elect to acquire an interest in the land under § 5-102 in order to assure the earlier discontinuance of the land use.

NOTE

Section 4-201 requires the Land Development Agency to begin enforcement proceedings against every existing use designated for discontinuance in the development ordinances, but subsection (2) of this Section allows the Agency to grant exemptions to specific land uses if the Agency finds that the grounds for discontinuing that category of land use are not applicable to the specific circumstance of a particular case.

In addition the Agency is authorized to exempt specific land uses from discontinuance if it finds that the benefits of discontinuance are outweighed by the hardship it causes. The Agency is required to consider, however, that the granting of individual exemptions may make it difficult to enforce the ordinance against other land uses in similar circumstances, and may therefore defeat the overall benefits that the ordinance is desired to create. Thus, in measuring the public benefits that would result from a discontinuance of a particular land use it must consider also the benefits that will be derived from the ability to require that other land uses in similar circumstances be discontinued.

Illustration: The City of San Barolo adopted a development ordinance which requires the discontinuance of grocery stores in certain specified residential districts. The widow Smith, who is blind and partially paralyzed, derives her sole source of income from a grocery store located in a residential district. In weighing the public benefits to be achieved by enforcing the ordinance the Agency should consider not only any benefit that may result from the elimination of this particular grocery store but any benefit that will be achieved through the ability to enforce the ordinance in other neighborhoods, because the granting of exemptions on the basis of personal hardship would make it impossible to enforce the ordinance elsewhere without being accused of discriminatory enforcement.

As noted in the Commentary to this Article, the courts have generally held that existing uses may be discontinued without compensation if the owner is given a reasonable amount of time in which to amortize his investment. Some ordinances have attempted to establish fixed time periods for amortization for specific categories of uses; *e.g.*, two years for billboards, five years for garages, etc. Other ordinances allow an administrative agency to determine a reasonable time on a case per case basis. The latter system is more equitable because specific land uses in the same category may differ widely in regard to those factors used to determine the reasonableness of the amortization period; *e.g.*, permanence of structure, extent of investment, etc. The factors to be considered by the Agency in determining a reasonable time are set forth in subsection (3).

Section 5-102 of the Code authorizes local governments to acquire an interest in land for the purpose of discontinuing existing uses. Subsection (4) provides that the Land Development Agency must notify the local governing body if it grants an extension of time for discontinuance of a land use beyond a period of three years. In such circumstances the local governing body will probably wish to consider whether it wants to acquire the land or some interest therein in order that the existing land use can be discontinued at an earlier date.

Cross-references: §§ 4-102(n); 4-201; 4-201(n); 5-102.

APPENDIX D —
RECORD CARD FOR NON-CONFORMING USES, SAN FRANCISCO
CITY PLANNING DEPARTMENT

Address	Block	Lot	Metres and Bounds	Answer YES or NO and date												
PERIOD OF AMORTIZATION & TERMINATION DATE																
<p>Under Sec. 153 5 years from 5/2/60, or from its later becoming non-conforming on _____</p> <p>Or, under Sec. 154, the later of: 20 years from 5/2/60, or from its later becoming non-conforming on _____ and From date of construction _____ plus 50 years <input type="checkbox"/> 40 years <input type="checkbox"/> 30 years <input type="checkbox"/> (Type 2) <input type="checkbox"/> (Type 3) <input type="checkbox"/> (Type 4 or 5) extended period to _____ Variance # _____</p>																
NON-CONFORMING USE EVALUATION																
CHANGE OF STATUS If answer is YES, notify owner of change to conforming status																
Has status of use changed to conforming by- <table border="1" style="margin-left: 20px;"> <tr><td>Reclassification of its lot</td></tr> <tr><td>Reclassification making it a conforming transitional use</td></tr> <tr><td>Conditional use granted under Sec. 154e</td></tr> <tr><td>Use changed to a conforming one</td></tr> </table>					Reclassification of its lot	Reclassification making it a conforming transitional use	Conditional use granted under Sec. 154e	Use changed to a conforming one								
Reclassification of its lot																
Reclassification making it a conforming transitional use																
Conditional use granted under Sec. 154e																
Use changed to a conforming one																
SECTION 152 DATA If answer is YES, notify owner of termination																
Has use been discontinued for- <table border="1" style="margin-left: 20px;"> <tr><td>6 months where there is no enclosed building</td></tr> <tr><td>3 years where building is designed for non-conforming commercial or industrial use</td></tr> <tr><td>18 months in other cases</td></tr> <tr><td>Is there clear evidence of intent to abandon</td></tr> </table>					6 months where there is no enclosed building	3 years where building is designed for non-conforming commercial or industrial use	18 months in other cases	Is there clear evidence of intent to abandon								
6 months where there is no enclosed building																
3 years where building is designed for non-conforming commercial or industrial use																
18 months in other cases																
Is there clear evidence of intent to abandon																
SECTION 153 DATA If answer is YES, notify owner of 5-year termination date																
Is it a commercial or industrial use involving no enclosed building <table border="1" style="margin-left: 20px;"> <tr><td></td></tr> <tr><td></td></tr> <tr><td></td></tr> <tr><td></td></tr> </table>																
Is it a C or M building in an R district with an assessed value not over \$500 on 5/2/60 or when later became non-conforming <table border="1" style="margin-left: 20px;"> <tr><td></td></tr> <tr><td></td></tr> <tr><td></td></tr> <tr><td></td></tr> </table>																
SECTION 154 DATA If answer is YES, calculate amortization period and notify owner of termination date unless exempt under Sec. 156																
Is the building- <table border="1" style="margin-left: 20px;"> <tr><td></td></tr> <tr><td></td></tr> <tr><td></td></tr> <tr><td></td></tr> </table> for a C or M use <table border="1" style="margin-left: 20px;"> <tr><td></td></tr> <tr><td></td></tr> <tr><td></td></tr> <tr><td></td></tr> </table> A non-conforming dwelling in an M district <table border="1" style="margin-left: 20px;"> <tr><td></td></tr> <tr><td></td></tr> <tr><td></td></tr> <tr><td></td></tr> </table>																
SECTION 156 DATA If answer is YES, building is exempt from Sec. 154 (and Sec. 151a) as the use- <table border="1" style="margin-left: 20px;"> <tr><td></td></tr> <tr><td></td></tr> <tr><td></td></tr> <tr><td></td></tr> </table>																
A C-1 use occupying ground floor space in a multiple dwelling on an R-4 or R-5 corner lot <table border="1" style="margin-left: 20px;"> <tr><td></td></tr> <tr><td></td></tr> <tr><td></td></tr> <tr><td></td></tr> </table>																
A motel in an R-3, R-4 or R-5 district <table border="1" style="margin-left: 20px;"> <tr><td></td></tr> <tr><td></td></tr> <tr><td></td></tr> <tr><td></td></tr> </table>																
SECTION 304 DATA																
Is the use an authorized conditional use under Sec. 304g <table border="1" style="margin-left: 20px;"> <tr><td></td></tr> <tr><td></td></tr> <tr><td></td></tr> <tr><td></td></tr> </table>																
Has the use been abandoned or discontinued for 3 years <table border="1" style="margin-left: 20px;"> <tr><td></td></tr> <tr><td></td></tr> <tr><td></td></tr> <tr><td></td></tr> </table>																
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Lot	Address	Block	HISTORY OF IMPROVEMENTS						Metes and Bounds		
			BUILDING PERMITS			HISTORICAL INFORMATION					
SUMMARY		Zone	Date	Zone	Date	Original Zone	Changed to	Case	Date	Res. #	
Non-conformity established by (re)classification as Non-conformity continued as (re)classification as		2		3							
Termination date under Sec. 153		Sec. 154		4							
Record closed on _____ because: _____											
Advertising signs dependent on continuance of this use are located on											
<input type="checkbox"/> This lot <input type="checkbox"/> Other lots:											
LAND USE HISTORY		Planning Code Section <input type="checkbox"/> <input type="checkbox"/>		Classification of use <input type="checkbox"/> <input type="checkbox"/>		PRIORITY STIPULATIONS (Sec. 149)		TRANSITIONAL USE (Sec. 118)		BUILDING DIAGRAM	
1919 Sanborn		1921 City Directory		1921 Telephone Dir.		<input type="checkbox"/> Stip. govern under Sec. 149b <input type="checkbox"/> Use is conforming for purposes of Sec. 149c		<input type="checkbox"/> Transitional use <input type="checkbox"/> If answer is YES to both, use is conforming		LOCATION DIAGRAM	
1921 Sanborn		1919 Land Use Map		1919 Land Use Map						Area of Lot _____ sq. ft.	
1937 Land Use Map		1947 Land Use Map		1947 Land Use Map							
1960 Sanborn		1960 City Directory		1960 Telephone Dir.							
1960 Sanborn		Land Use		Land Use							
Land Use		Land Use		Land Use							
Land Use		Land Use		Land Use							
Land Use		Land Use		Land Use							
Land Use		Land Use		Land Use							
ASSESSED VALUATION (valuation of improvements only)		Value		Date		PHOTO		PHOTO		PHOTO	
On 5/2/60 or when later became non-conforming											
Ass't, & date thereof, prior to first structural alteration											
Amount of alterations counting against 1/2 the above											

APPENDIX E —
SANTA CRUZ COUNTY, CALIFORNIA CODE REGULATING BATH
AND MASSAGE BUSINESSES

ORDINANCE NO. 2428ORDINANCE AMENDING TITLE 9 OF THE SANTA CRUZ COUNTY CODE
PROVIDING FOR REGULATION OF BATH AND MASSAGE BUSINESSES

SECTION I

Title 9 of the Santa Cruz County Code is hereby amended by adding Chapter 9.88 thereto, said New Chapter to read:

CHAPTER 9.88
BATH OR MASSAGE ESTABLISHMENTS

Sections:

9.88.001 Purpose
9.88.010 Definitions
9.88.020 Location Restriction
9.88.030 Prohibitions
9.88.040 Operating Requirements
9.88.050 Applicability of Chapter to Existing Facilities
9.88.060 Exemptions
9.88.070 Penalties for Violations

9.88.001
PURPOSE

It is the purpose of this Chapter to provide for the orderly regulation of bath or massage establishments in the County of Santa Cruz in order to protect the public health and welfare by establishing certain minimum standards for the conduct of this type of business and by restricting the permitted locations thereof.

This ordinance is adopted pursuant to Sections 51030 through 51034 of the California Government Code.

9.88.010
DEFINITIONS

- (a) "Bath" shall mean
- (b) "Massage" shall mean ...
- (c) "Masseur/masseuse" shall mean ...
- (d) "Bath or massage establishment" shall mean ...

9.88.020
LOCATION RESTRICTION

No person shall operate a bath or massage establishment at any location if the property, or any portion thereof, on which the bath or massage establishment would be located is: a) within 1000 feet of any property or portion thereof on which another bath or massage establishment is located and doing business: or b) within 500 feet of any property or portion thereof which is used for an elementary school, junior high school, high school or public playground.

9.88.030
PROHIBITIONS

- (a) A masseur/masseuse shall not administer or offer to administer any bath or massage to any person under 18 years of age unless such person is accompanied by a parent or guardian.
- (b) No person under 18 years of age shall work or be permitted to work on the premises of any bath or massage establishment.
- (c) No food or beverage shall be sold or served, nor shall any business activity other than baths or massages be conducted on the premises of a bath or massage establishment.

9.88.040
OPERATING REQUIREMENTS

- (a) A list of services available and cost of such services shall be posted in an open and conspicuous public place on the premises of each bath or massage establishment. No owner, operator, responsible managing employee or manager in charge of, or in control of, the bath or massage establishment shall permit, and no masseur/masseuse shall offer to perform, any services other than those posted.
- (b) A minimum of one tub or shower and one toilet and wash basin shall be provided for the patrons in every bath or massage establishment; however, if male and female patrons are to be served simultaneously at said establishment, separate toilet facilities shall be provided for male and female patrons. Hot and cold running water under pressure, soap or detergent, and sanitary towels shall also be provided in all facilities.

9.88.050**APPLICABILITY OF CHAPTER TO EXISTING FACILITIES**

Any person, association, partnership or corporation lawfully engaging in or carrying on the operation of a bath or massage establishment on the effective date of this Chapter shall comply with all of the provisions of this Chapter, except those of Section 9.88.020, within 180 days of the effective date thereof.

9.88.060**EXEMPTIONS**

This Chapter shall not apply to athletic team trainers, cosmetologists, barbers, or persons licensed to practice any healing art under the provisions of Division 2 (commencing with Section 500) of the California Business and Professionals Code when engaging in such practice within the scope of his or her licence.

9.88.070**PENALTIES FOR VIOLATIONS**

Any person, firm or corporation violating any of the provisions of this Chapter shall be guilty of an infraction, and upon conviction thereof shall be punishable by a fine of not more than \$100.00; provided, however, that any offense which would otherwise be an infraction is a misdemeanor if the defendant has been convicted of three or more violations of this Chapter within the 12 month period immediately preceding the commission of the offense and such prior convictions are admitted by the defendant or alleged in the accusatory pleading. For this purpose, a bail forfeiture shall be deemed to be a conviction of the offense charged. Each person shall be deemed guilty of a separate offense for every day during any portion of which any violation of any provision of this Chapter is committed, continued or permitted by such person, firm or corporation and shall be punishable therefor as provided by this Chapter.

SECTION II

This ordinance shall take effect 30 days after final passage.

PASSED AND ADOPTED this 24th day of May, 1977.

APPENDIX F —
PROPOSED AMENDMENT TO NEW YORK CITY ZONING RESOLUTION
CONCERNING REGULATION OF ADULT USES

APPENDIX F

New York City, City Planning Commission.

Proposed (1977) Amendments of the Zoning Resolution pursuant to Section 200 of the New York City Charter relating to various Sections concerning the definition of and regulation of adult uses. These amendments combine the provisions of the earlier proposals N 760137 ZRY, N 770022 ZRY and N 770029 ZRY. In addition these amendments change the threshold definition of an Adult Use requiring a significant or substantial activity rather than a primary or predominant activity and prohibit Adult Uses within 500 feet of a school or a House of Worship rather than within 200 feet, as required by the earlier amendments.

12-10 Definitions

Adult Use

An "adult use" is any of the following uses defined below. An adult use shall always be a primary use and may not be accessory to any other use including another adult use. In the case of a combination of adult uses each use shall be considered as a separate primary use. Any establishment whether commercial or non-commercial, open to the public or open to a limited membership such as a club or organization and whether operated as a profit or not for profit entity, which contains as a primary use or activity any of the five defined adult uses, shall be and shall comply with the provisions of Section 32-46 (Regulation of Adult Uses). In order to obtain Certificates of Occupancy all adult uses shall comply with the requirements of Section 32-46 (Regulation of Adult uses). No adult physical culture establishment, whether pre-existing or new shall receive a Certificate of Occupancy.

Nothing in these definitions or in Section 32-46 (Regulation of Adult Uses) shall be deemed to authorize any activity which would otherwise be a violation of state law.

(a) Adult Bookstore

An "adult bookstore" is a bookstore or other establishment having a substantial or significant portion of its stock in trade in books, magazines, periodicals or novelties which are distinguished or characterized by their emphasis on matter depicting, describing or relating to specified sexual activities or specified anatomical areas.

(b) Adult Motion Picture Theatre

An "adult motion picture theatre" is a motion picture theatre or other facility used substantially or significantly for presenting cinematic material distinguished or characterized by an emphasis on matter depicting, describing or relating to specified sexual activities or specified anatomical areas.

(c) Adult coin operated entertainment facility

An "adult coin operated facility" is a motion picture theatre or other establishment containing one or more coin operated mechanisms intended to be viewed individually which substantially or significantly presents material distinguished or characterized by an emphasis on matter depicting, describing or relating to specified sexual activities or specified anatomical areas.

(d) Adult "topless" entertainment establishments

An "adult 'topless' entertainment establishment" is any establishment whether or not an eating and drinking place and whether or not such establishment is authorized to sell beer or intoxicating liquor for consumption on the premises, which provides dancers or any other form of entertainment that involves specified sexual activities or the display of specified anatomical areas as the substantial significant entertainment activity of such establishment.

(e) Adult physical culture establishment

An "adult physical culture establishment" is any establishment which offers or advertises, by members of the opposite sex, massage, body rubs or physical contact with specified anatomical areas, whether or not licensed. Establishments which routinely provide medical services by state licensed medical practitioners, electrolysis treatment by licensed operators of electrolysis equipment, continuing instruction in martial or performing arts or instruction in organized athletic activities shall be excluded from the definition of adult physical culture establishments.

Specified sexual activities

"Specified sexual activities" are:

- (a) Human genitals in a state of sexual stimulation or arousal;
- (b) Acts of human masturbation, sexual intercourse or sodomy; or
- (c) Fondling or other erotic touching of human genitals, pubic region, buttock or female breast.

Specified anatomical areas

"Specified anatomical areas" are:

- (a) Less than completely and opaquely covered: (1) human genitals, pubic region, (2) buttock, and (3) female breast below a point immediately above the top of the aureola; or

(b) human male genitals, less than completely and opaquely covered, or human male genitals in a discernibly turgid state, even if completely and opaquely covered.

32-15

Use Group 6

C. RETAIL OR SERVICE ESTABLISHMENTS

Bookstores, other than adult bookstores** or coin operated entertainment facilities**

** Adult uses, marked with a double asterisk, are permitted only in accordance with the provisions of Section 32-46 (Regulation of Adult Uses).

32-17

Use Group 8

A. AMUSEMENTS

Theatres, other than adult motion picture theatres** or adult coin operated entertainment facilities ** or adult "topless" entertainment establishments**

** Adult uses, marked with a double asterisk, are permitted only in accordance with the provisions of Section 32-46 (Regulation of Adult Uses).

32-18

Use Group 9

A. RETAIL OR SERVICE ESTABLISHMENTS

[*] *Physical culture or health establishments, including gyms, including gyms, saunas, massage establishments or steam baths, other than reducing salons, massage establishments or steam baths, other than adult physical culture establishments**

** For a use in Use Group 9, marked with a double asterisk, shall be permitted or established for an interim period of 90 days from the effective date of this amendment, except in the Special Theatre District and the Special Clinton District where special locational restrictions apply to such uses. However, this provision shall not apply to gyms used exclusively for the following sports facilities: basketball, handball, squash and tennis.]

** Adult uses, marked with a double asterisk, are permitted only in accordance with the provisions of Section 32-46 (Regulation of Adult Uses).

32-19

Use Group 10

A. RETAIL OR SERVICE ESTABLISHMENTS

Eating or drinking places, without restrictions on entertainment or dancing, but limited to locations in hotels, other than adult "topless" entertainment establishments.**

** Adult uses, marked with a double asterisk, are permitted only in accordance with the provisions of Section 32-46 (Regulation of Adult Uses).

32-21

Use Group 12

A. AMUSEMENTS

Eating or drinking places without restrictions on entertainment or dancing, other than adult "topless" entertainment establishments.**

B. RETAIL ESTABLISHMENTS

Bookstores, other than adult bookstores** or adult coin operated entertainment facilities**

** Adult uses, marked with a double asterisk, are permitted only in accordance with the provisions of Section 32-46 (Regulation of Adult Uses).

32-22

Use Group 13

A. AMUSEMENTS

Theatres, other than adult motion picture theatres** or adult coin operated entertainment facilities** or adult "topless" entertainment establishments.

** Adult uses, marked with a double asterisk, are permitted only in accordance with the provisions of Section 32-46 (Regulation of Adult Uses).

32-24

Use Group 15

Penny arcades, other than adult coin operated entertainment facilities**

** Adult uses, marked with a double asterisk are permitted only in accordance with the provisions of Section 32-46 (Regulation of Adult Uses).

32-46

Regulation of Adult Uses

Notwithstanding any other provisions of this resolution including any special purpose district adult uses are permitted only within C4-2, C4-3, C4-4, C4-5, C4-6, C4-7, C6-4, C6-5, C6-6, C6-7, C6-8 and C6-9 districts.

Any adult use which does not conform to the provisions of this Section including those adult uses located in districts other than C4-2, C4-3, C4-4, C4-5, C4-6, C4-7, C6-4, C6-5, C6-6, C6-7, C6-8 and C6-9 districts

or those adult uses within 500 feet of a residence district shall not be prior non-conforming uses. In addition to being limited to such districts, all adult uses shall be subject to the distance, concentration, sign and amortization restrictions of this Section.

32-461 Distance regulations

No adult use shall be located within 500 feet of a residence or C1 or C2 district or within 500 feet of a zoning lot containing a building the primary use of which is an existing House of Worship or an existing school.

As of the date any new adult use applies for a Certificate of Occupancy any school or House of Worship for which a building permit has been issued and which has completed substantial construction of foundations shall be considered as existing.

The distance shall be determined by measuring from the edge of the nearest residence or C1 or C2 district boundary, or in the case of a building the primary use of which is a school or a House of Worship from the edge of the nearest lot line of the zoning lot containing the adult use.

32-462 Concentration of adult uses

In C4-2, C4-3, C4-5, C4-6, C4-7 districts no new adult use may be established where, within an area circumscribed by a line 1,000 feet in perpendicular or radial distance from the center of the zoning lot of the proposed new adult use two or more adult uses presently exist.

In C6-4, C6-5, C6-7, C6-8 and C6-9 districts no new adult use may be established where within an area circumscribed by a line 1,000 feet in perpendicular or radial distance from the centre of the zoning lot of the proposed adult use three or more adult uses presently exist.

32-463 Adult use sign regulations

No sign or window display for in respect of any adult use shall display or describe a specified sexual activity or a specified anatomical area. No adult use shall have more than one accessory business sign, except that an adult motion picture theatre may in addition have a marquee. No advertising signs are permitted for an adult use.

- (a) be illuminated nor contain flashing lights of any sort, except that adult motion picture theatre marquees may be illuminated, and
- (b) extend beyond the street line, except for adult motion picture theatre marquees.

32-364 Amortization of adult uses

All adult uses located in districts other than C4-2, C4-3, C4-4, C4-5, C4-6, C4-7, C6-4, C6-5, C6-6, C6-7, C6-8 and C6-9 districts shall terminate within one year of the effective date of this amendment.

All adult physical culture establishments shall terminate within one year of the effective date of this amendment, except that those uses which under this amendment constitute adult physical culture establishments and which were required to be amortized pursuant to a prior amendment (CP-23116) approved by the Board of Estimate as Calendar No. 83 on January 8, 1976, shall terminate not later than January 8, 1977.

Within C4-2, C4-3, C4-4, C4-5, C4-6, C4-7, C6-4, C6-5, C6-6, C6-7, C6-8 and C6-9 districts all adult uses located within 500 feet of a residence or C1 or C2 district or within 500 feet of a zoning lot containing a building the primary use of which is an existing House of Worship or an existing school shall terminate within one year of the effective date of this amendment.

As of the effective date of this amendment any school or House of Worship for which a building permit has been issued and which has completed substantial construction of foundations shall be considered to be existing.

Within C4-2, C4-3, C4-4, C4-5, C4-6, C4-7, C6-4, C6-5, C6-6, C6-7, C6-8 and C6-9 districts beyond 500 feet from a residence or C1 or C2 districts shall be amortized within one year of the effective date of this amendment, in accordance with the regulations set forth below:

C4-2, C4-3, C4-4, C4-5, C4-6, C4-7, C6-4, C6-5, C6-6, C6-7, C6-8 and C6-9 districts shall be divided into zones for the purpose of determining which adult uses are to be amortized. The boundaries of such zones shall be parallel to the westerly boundary of such zones shall be parallel to the westerly boundary of the district and shall have an east-west dimension of 1,000 feet. Where the east-west dimension of any district is less than 1000 feet or where after dividing the district into one or more zones of 1,000 feet the remainder is less than 1,000 feet, such district or remainder thereof shall be a zone for amortization purposes.

Within C4-2, C4-3, C4-4, C4-5, C4-6 and C4-7 districts, no zone may contain more than two existing adult uses.

Within C6-4, C6-5, C6-6, C6-7, C6-8 and C6-9 districts, where any zone contains 10 or more blocks or portions of 10 or more blocks, such zone may contain three existing adult uses.

Within C6-4, C6-5, C6-6, C6-7, C6-8 and C6-9 districts, where any zone contains less than 10 blocks or portions of 10 blocks, such zone may contain two existing adult uses.

Whenever the number of existing adult uses in any zone exceeds the permissible number of existing adult uses for such zone the number of such uses shall be reduced to the permissible number by terminating those adult uses closest to the nearest residence or C1 or C2 district. Where two or more adult uses are located on different stories within a single building the use located on the lower story is deemed to be closer to the nearest residential district boundary. Where two adult uses are equidistant from the nearest residential or C1 or C2 district boundary the adult use occupying the larger floor area shall be the use which terminates.

32-465 Accessory off-street parking and loading requirements

All adult uses shall provide accessory off-street parking spaces and accessory off-street loading berths in accordance with Sections 36-20 (REQUIRED ACCESSORY OFF-STREET PARKING SPACES FOR COMMERCIAL OR COMMUNITY FACILITY USES) and 32-32 (REQUIRED ACCESSORY OFF-STREET LOADING BERTHS). For this purpose, adult uses shall be considered as uses listed in the following Use Groups and having the following parking requirement categories:

Adult bookstore-Use Group 6C, Parking Requirement Category B
 Adult motion picture theatre - Use Group 8A, parking requirement Category D
 Adult topless entertainment establishment - Use Group 6A, parking requirement Category B
 Adult coin operated entertainment facility - Use Group 15A, parking requirement Category E
 Adult physical culture establishment - Use Group 9A, parking requirement Category B

53-30 Enlargements or Extensions

In all districts, any conforming use which is in violation of the supplementary use regulations, or of the special provisions applying along district boundaries, may be enlarged or extended, provided that the extended or enlarged floor area shall not create new instances of such violation or increase the degree of violation previously existing and provided further that in the case of any adult use which is to be amortized pursuant to the provisions of Section 32-46 (Regulation of Adult Uses) shall not be extended, enlarged or altered.

73-35 Adult uses

In C4-2, C4-3, C4-4, C4-5, C4-6, C4-7, C6-4, C6-5, C6-6, C6-7, C6-8 and C6-9 districts, the Board may, subject to notification and review by the affected Community Board in accordance with Section 668 of the New York

City Charter and the Uniform Land Use Review Procedures, exempt an existing adult use, other than an adult physical culture establishment, from the requirements of Section 32-464 (Amortization of Adult Uses) notwithstanding the provisions of Section 32-462 (Concentration of Adult Uses) provided the Board finds that:

- (a) The use does not adversely affect adjacent property;
- (b) The zoning lot containing such adult use is more than 500 feet from the nearest residence or C1 or C2 district and is more than 500 feet from any zoning lot containing a building the primary use of which is an existing House of Worship or an existing school;
- (c) The retention of the adult use would not create a concentration such as would be contrary to the public interest or would adversely affect the surrounding neighborhood, and
- (d) The retention of such adult use would not be contrary to any program of neighborhood preservation nor does it interfere with any program of urban renewal;

or alternatively finds that, in the case of an adult bookstore or adult motion picture theatre under the conditions or safeguards imposed, the hazards or disadvantages of such special permit use at the particular site are outweighed by the advantages to be derived by the grant of such special permit.

74-46 Adult Uses

In C4-2, C4-3, C4-4, C4-5, C4-6, C4-7, C6-4, C6-5, C6-6, C6-7, C6-8 and C6-9 districts, the Commission may, subject to notification and review by the affected Community Board in accordance with Section 197-c of the New York City Charter and the Uniform Land Use Review Procedures, permit the location of an adult use, other than an adult physical culture establishment notwithstanding the provisions of Section 32-462 (Concentration of Adult Uses) provided the Commission finds that:

- (a) The use does not adversely affect adjacent property;
- (b) The zoning lot containing such adult use is more than 500 feet from the nearest residence or C1 or C2 district and is more than 500 feet from any zoning lot containing a building the primary use of which is an existing House of Worship or an existing school;
- (c) The addition of such adult use will not create a concentration such as would be contrary to the public interest or would adversely affect the surrounding neighbourhood; and
- (d) The addition of such adult use will not be contrary to any program of neighbourhood preservation nor does it interfere with any program of urban renewal;

or alternatively finds that, in the case of an adult bookstore or an adult motion picture theatre under the conditions and safeguards imposed, the hazards or disadvantages of such special permit use at the particular site are outweighed by the advantages to be derived by the grant of such special permit.

G. RETAIL OR SERVICE ESTABLISHMENTS

[*] 42. Physical culture or health establishments, including gymanasiums, reducing salons, massage establishments or steam baths.

[**] For a use in Use Group LC, marked with a double asterisk, no new such uses shall be permitted or established for an interim period of 90 days from the effective date of this amendment. However, this provision shall not apply to gymanasiums used exclusively for the following sports facilities: basketball, handball, squash or tennis.]

94-061

Uses permitted as of right

[**] Physical culture or health establishments, including gymanasiums, reducing salons, massage establishments or steam baths.

[**] For a use listed in Section 94-061 (Uses permitted as of right), marked with a double asterisk, no new such uses shall be permitted or established for an interim period of 90 days from the effective date of this amendment. However, this provision shall not apply to gymanasiums used exclusively for the following sports facilities: basketball, handball, squash or tennis.]

94-062

Use Group SB

[**] Physical culture or health establishments, including gymanasiums, having a rated capacity of not more than 50 people.

[**] For a use listed in Use Group SB, marked with a double asterisk, no new such uses shall be permitted for an interim period of 90 days from the effective date of this amendment. However, this provision shall not apply to gymanasiums used exclusively for the following sports facilities: basketball, handball, squash or tennis.

95-081

Use Group T

[*] * 39. Physical culture or health establishments, including gyms, reducing salons, massage establishments or steam baths.

[**] For a use in Use Group T, marked with a double asterisk, no new such uses shall be permitted or established for an interim period of 90 days effective date of this amendment. However, this provision shall not apply to gyms used exclusively for the following sports facilities: basketball, handball, squash or tennis.

99-031

Use Group MP

B.

1. RETAIL OR SERVICE ESTABLISHMENTS

[*] 15. *Physical culture or health establishments, including gyms, reducing salons, massage establishments or steam baths.

[**] For a use listed in Use Group MP, marked with a double asterisk, no new such uses shall be permitted or established for an interim period of 90 days from the effective date of this amendment. However, this provision shall not apply to gyms used exclusively for the following sports facilities: basketball, handball, squash or tennis.]

101-031

Use Group Y

D. RETAIL OR SERVICE ESTABLISHMENTS

[*] * 41. Physical culture or health establishments, including gyms, reducing salons, massage establishments or steam baths.

[**] For a use listed in Use Group Y, marked with a double asterisk, such uses shall be permitted or established for an interim period of 90 days from the effective date of this amendment. However, this provision shall not apply to gyms used exclusively for

the following sports facilities: basketball, handball, squash or tennis.]

[81-021

Special use regulations

When permitted by the underlying district regulations, physical culture or health establishments, however described or advertised, including without limitation, reducing salons, massage establishments or steam baths, are restricted to locations in transient hotels with 200 rooms or more provided that no such use and no accessory business sign fronts upon a street or public way and community facilities or buildings predominantly occupied by a community facility. Where such physical culture or health establishments contain any of the following regulation size* sports facilities: basketball courts, handball courts, squash courts, tennis courts or a swimming pool of a minimum 1,500 sq. ft., such locational restriction shall not apply. Where a use is rendered non-conforming by such location restrictions, and where such use does not occupy at least 4,500 sq. ft. on one floor as of October 1, 1975, such use shall terminate not later than one year after the effective date of such restriction, and thereafter the space formerly occupied by such use shall be used only for a conforming use]

[* Regulation size shall mean:

Basketball Courts - width 50 feet; length 84 feet; clear height 20 feet minimum.

Surrounding the perimeter there shall be a minimum of 3 feet of clear open space.

Handball Courts - width 55 feet at back end; length 50 feet; clear height 23 feet.

Squash Courts - width 25 feet; length 45 feet; clear height 20 feet.

Tennis Courts - width 60 feet; length 120 feet; clear height 32 feet at net, 8 feet at wall lines.]

[96-524

Special use regulations

When permitted by the underlying district regulations, physical culture or health establishments, however described or advertised, including without limitation, reducing salons, massage establishments or steam baths, are restricted to location in transient hotels with 200 rooms

or more provided that no such use or accessory business sign fronts upon a street or public way and community facilities or buildings predominantly occupied by a community facility. Where such physical culture or health establishments contain any of the following regulation size * sports facilities: basketball courts, handball courts, squash courts, tennis courts or a swimming pool of a minimum 1,500 sq. ft., such locational restrictions shall not apply. Where a use rendered non-conforming by such locational restrictions, and where such use does not occupy at least 4,500 sq. ft. on one floor as of October 1, 1975 such use shall terminate not later than one year after the effective date of such restriction, and thereafter the space formerly occupied by such use shall be used only for a conforming use.]

[* Regulation size shall mean:

Basketball Courts - width 50 feet; length 84 feet; clear height 20 feet minimum. Surrounding the perimeter there shall be a minimum of 3 feet clear open space.

Handball Courts - width 55 feet at the back end; length 50 feet; clear height 23 feet.

Squash Courts - width 25 feet; length 45 feet; clear height 20 feet.

Tennis Courts - width 25 feet; length 45 feet; clear height 20 feet.

Tennis Courts - width 60 feet; length 120 feet; clear height 32 feet at net, 8 feet at wall lines.]

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